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STATE OF NORTH CAROLINA

SESSION LAWS AND RESOLUTIONS

PASSED BY THE

1987 GENERAL ASSEMBLY

AT ITS

FIRST SESSION 1987

BEGINNING ON

MONDAY, THE NINTH DAY OF FEBRUARY, A.D. 1987

HELD IN THE CITY OF RALEIGH

ISSUED BY
SECRETARY OF STATE THAD EURE

PUBLISHED BY AUTHORITY

Lithographed by
West Publishing Company
St. Paul, Minn.



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STATE OF NORTH CAROLINA

PRESIDING OFFICERS OF THE 1987 GENERAL ASSEMBLY

| | | |
|----------------------|--|------------|
| ROBERT B. JORDAN III | President of the Senate | Montgomery |
| LISTON BRYAN RAMSEY | Speaker of the House of Representatives | Madison |

EXECUTIVE BRANCH

(Offices established by the Constitution, filled by
election and comprising the Council of State)

| | | |
|----------------------|---|-------------|
| JAMES G. MARTIN (R) | Governor | Mecklenburg |
| ROBERT B. JORDAN III | Lieutenant Governor | Montgomery |
| THAD EURE | Secretary of State | Hertford |
| EDWARD RENFROW | Auditor | Johnston |
| HARLAN E. BOYLES | Treasurer | Wake |
| A. CRAIG PHILLIPS | Superintendent of Public Instruction | Guilford |
| LACY H. THORNBURG | Attorney General | Jackson |
| JAMES A. GRAHAM | Commissioner of Agriculture | Rowan |
| JOHN C. BROOKS | Commissioner of Labor | Wake |
| JAMES A. LONG | Commissioner of Insurance | Alamance |

The political affiliation of each legislator and member of the Council of State listed on this and the following pages is Democratic unless designated Republican by the abbreviation (R).

G.S. 147-16.1 authorizes publication of Executive Orders of the Governor in the Session Laws of North Carolina. Executive Orders from Governor Martin are carried in the appendix to this volume.

1987 GENERAL ASSEMBLY

SENATE OFFICERS

| <i>Name</i> | <i>Position</i> | <i>Address</i> |
|-----------------------------|----------------------------------|--------------------|
| ROBERT B. JORDAN III | President | Mt. Gilead |
| J. J. HARRINGTON | President Pro Tempore | Lewiston-Woodville |
| KENNETH C. ROYALL, JR. | Deputy President Pro Tempore ... | Durham |
| ANTHONY E. RAND | Majority Leader | Fayetteville |
| SYLVIA M. FINK | Principal Clerk | Raleigh |
| LEROY CLARK, JR | Reading Clerk | Wendell |
| GERDA B. PLEASANTS | Sergeant-at-Arms | Cary |

SENATORS

| <i>District</i> | <i>Name</i> | <i>County</i> | <i>Address</i> |
|-----------------|-------------------------------|-------------------|--------------------|
| 1 | MARC BASNIGHT | Dare | Manteo |
| 2 | J. J. HARRINGTON | Bertie | Lewiston-Woodville |
| 3 | WILLIAM H. BARKER | Craven | Vanceboro |
| 4 | A. D. GUY | Onslow | Jacksonville |
| 5 | HAROLD W. HARDISON | Lenoir | Deep Run |
| 6 | R. L. MARTIN | Pitt | Bethel |
| 7 | FRANKLIN BLOCK | New Hanover | Wrightsville Beach |
| 8 | HENSON P. BARNES | Wayne | Goldsboro |
| 9 | THOMAS F. TAFT | Pitt | Greenville |
| 10 | JAMES E. EZZEL, JR. | Nash | Rocky Mount |
| 11 | JAMES D. SPEED | Franklin | Louisburg |
| 12 | ANTHONY E. RAND | Cumberland | Fayetteville |
| 12 | LURA S. TALLY | Cumberland | Fayetteville |
| 13 | KENNETH C. ROYALL, JR. | Durham | Durham |
| 13 | RALPH A. HUNT | Durham | Durham |
| 14 | JOSEPH E. JOHNSON | Wake | Raleigh |
| 14 | WILLIAM W. STATON | Lee | Sanford |
| 14 | J. K. SHERRON, JR. | Wake | Raleigh |
| 15 | ROBERT D. WARREN | Johnston | Benson |
| 16 | RUSSELL G. WALKER | Randolph | Asheboro |
| 16 | WANDA H. HUNT | Moore | Pinehurst |
| 17 | J. RICHARD CONDER | Richmond | Rockingham |
| 17 | AARON W. PLYLER | Union | Monroe |
| 18 | R. C. SOLES, JR | Columbus | Tabor City |
| 19 | ROBERT G. SHAW (R) | Guilford | Greensboro |
| 20 | MARVIN M. WARD | Forsyth | Winston-Salem |
| 20 | TED KAPLAN | Forsyth | Winston-Salem |
| 21 | GEORGE B. DANIEL | Caswell | Yanceyville |
| 22 | JAMES C. JOHNSON, JR. (R) .. | Cabarrus | Concord |
| 23 | ROBERT VANCE SOMERS (R) .. | Rowan | Salisbury |
| 23 | PAUL S. SMITH (R) | Rowan | Salisbury |
| 24 | WILLIAM D. GOLDSTON, JR. | Rockingham | Eden |
| 24 | A. P. SANDS III | Rockingham | Reidsville |
| 25 | J. OLLIE HARRIS | Cleveland | Kings Mountain |
| 25 | HELEN RHYNE MARVIN | Gaston | Gastonia |
| 25 | MARSHALL A. RAUCH | Gaston | Gastonia |
| 26 | AUSTIN M. ALLRAN (R) | Catawba | Hickory |
| 26 | HOWARD F. BRYAN (R)* | Iredell | Statesville |
| 27 | DONALD R. KINCAID (R) | Caldwell | Lenoir |
| 27 | DANIEL R. SIMPSON (R) | Burke | Morganton |
| 28 | ROBERT S. SWAIN | Buncombe | Asheville |
| 28 | DENNIS J. WINNER | Buncombe | Asheville |
| 29 | CHARLES WILLIAM HIPPS | Haywood | Waynesville |
| 29 | R. P. THOMAS | Henderson | Hendersonville |
| 30 | DAVID RUSSELL PARNELL | Robeson | Parkton |
| 31 | WILLIAM N. MARTIN | Guilford | Greensboro |
| 32 | MARY P. SEYMOUR | Guilford | Greensboro |
| 33 | JAMES F. RICHARDSON | Mecklenburg | Charlotte |
| 34 | JAMES D. McDUFFIE (R) | Mecklenburg | Charlotte |
| 35 | LAURENCE A. COBB (R) | Mecklenburg | Charlotte |

* Howard F. Bryan was appointed by Governor Martin 3/12/87, to replace William W. Redman who resigned effective 3/11/87.

HOUSE OFFICERS

| <i>Name</i> | <i>Position</i> | <i>Address</i> |
|-------------------------|------------------------|-----------------------------|
| LISTON B. RAMSEY | Speaker | Marshall, Madison County |
| JOHN J. HUNT | Speaker Pro Tempore .. | Lattimore, Cleveland County |
| GRACE A. COLLINS | Principal Clerk | Fuquay-Varina, Wake County |
| SAM J. BURROW, JR. | Reading Clerk. | Cary, Wake County |
| LARRY P. EAGLES | Sergeant-at-Arms. | Tarboro, Edgecombe County |

REPRESENTATIVES

| <i>District</i> | <i>Name</i> | <i>County</i> | <i>Address</i> |
|-----------------|----------------------------------|-----------------|----------------|
| 1 | VERNON G. JAMES | Pasquotank ... | Elizabeth City |
| 1 | R. M. THOMPSON | Chowan | Edenton |
| 2 | HOWARD B. CHAPIN | Beaufort | Washington |
| 3 | GERALD L. ANDERSON | Craven | Bridgeton |
| 3 | DANIEL T. LILEY | Lenoir | Kinston |
| 3 | BEVERLY M. PERDUE | Craven | New Bern |
| 4 | W. BRUCE ETHRIDGE | Onslow | Swansboro |
| 4 | ROBERT GRADY (R) | Onslow | Jacksonville |
| 4 | J. PAUL TYNDALL | Onslow | Jacksonville |
| 5 | BREWSTER W. BROWN | Hertford | Winton |
| 6 | EUGENE ROGERS | Martin | Williamston |
| 7 | THOMAS C. HARDAWAY | Halifax | Enfield |
| 8 | JOSEPHUS L. MAVRETIC | Edgecombe ... | Tarboro |
| 9 | WALTER B. JONES, JR. | Pitt | Farmville |
| 9 | EDWARD N. WARREN | Pitt | Greenville |
| 10 | WENDELL H. MURPHY | Duplin | Rose Hill |
| 11 | JOHN KERR | Wayne | Goldsboro |
| 11 | JOHN TART | Wayne | Goldsboro |
| 12 | EDD NYE | Bladen | Elizabethtown |
| 12 | ED BOWEN | Sampson | Harrells |
| 13 | A. M. HALL | New Hanover . | Wilmington |
| 13 | HARRY E. PAYNE | New Hanover . | Wilmington |
| 14 | E. DAVID REDWINE | Brunswick | Shallotte |
| 15 | RICHARD WRIGHT | Columbus | Tabor City |
| 16 | DANIEL H. DEVANE | Hoke | Raeford |
| 16 | JOHN CALVIN HASTY | Robeson | Maxton |
| 16 | SIDNEY A. LOCKS | Robeson | Lumberton |
| 17 | C. R. EDWARDS | Cumberland .. | Fayetteville |
| 17 | LUTHER R. JERALDS | Cumberland .. | Fayetteville |
| 18 | R. D. BEARD | Cumberland .. | Fayetteville |
| 18 | JOE RAYNOR | Cumberland .. | Fayetteville |
| 18 | ALEX WARNER | Cumberland .. | Hope Mills |
| 19 | BOB R. ETHERIDGE | Harnett | Lillington |
| 19 | DENNIS A. WICKER | Lee | Sanford |
| 20 | GEORGE W. BRANNAN | Johnston | Smithfield |
| 20 | BARNEY PAUL WOODARD | Johnston | Princeton |
| 21 | DANIEL T. BLUE, JR. | Wake | Raleigh |
| 22 | JOHN T. CHURCH | Vance | Henderson |
| 22 | JAMES W. CRAWFORD, JR. | Granville | Oxford |
| 22 | WILLIAM T. WATKINS | Granville | Oxford |
| 23 | H. M. MICHAUX, JR. | Durham | Durham |
| 24 | ANNE C. BARNES | Orange | Chapel Hill |
| 24 | JOE HACKNEY | Orange | Chapel Hill |
| 25 | J. FRED BOWMAN | Alamance | Burlington |
| 25 | BERTHA M. HOLT | Alamance | Burlington |
| 25 | R. SAMUEL HUNT, III | Alamance | Burlington |
| 25 | ROBERT L. MCALISTER | Rockingham .. | Ruffin |
| 26 | HERMAN C. GIST | Guilford | Greensboro |
| 27 | MARGARET P. KEESEE-FORRESTER (R) | Guilford | Greensboro |
| 27 | ALBERT S. LINEBERRY, SR. | Guilford | Greensboro |
| 27 | FRANK J. SIZEMORE, III (R) | Guilford | Greensboro |
| 28 | RICHARD E. CHALK (R) | Guilford | High Point |
| 28 | MARY JARRELL | Guilford | High Point |
| 29 | MICHAEL P. DECKER (R) | Forsyth | Walkertown |
| 30 | WILLIAM T. BOYD (R) | Randolph | Asheboro |
| 31 | JAMES M. CRAVEN (R) | Moore | Pinebluff |

| | | | |
|----|-----------------------------|-------------|----------------|
| 32 | DONALD M. DAWKINS | Richmond | Rockingham |
| 33 | FOYLE HIGHTOWER, JR. | Anson | Wadesboro |
| 34 | WILLIAM G. ALEXANDER | Cabarrus | Kannapolis |
| 34 | BOBBY H. BARBEE, SR. (R) | Stanly | Locust |
| 34 | COY C. PRIVETTE (R) | Cabarrus | Kannapolis |
| 34 | TIMOTHY N. TALLENT (R) | Cabarrus | Concord |
| 35 | CHARLOTTE A. GARDNER (R) | Rowan | Salisbury |
| 35 | BRADFORD V. LIGON (R) | Rowan | Salisbury |
| 36 | RAYMOND WARREN (R) | Mecklenburg | Mint Hill |
| 37 | BETSY L. COCHRANE (R) | Davie | Advance |
| 37 | CHARLES L. CROMER (R) | Davidson | Thomasville |
| 37 | JOE H. HEGE, JR. (R) | Davidson | Lexington |
| 38 | HAROLD J. BRUBAKER (R) | Randolph | Asheboro |
| 39 | ANN Q. DUNCAN (R) | Forsyth | Pfafftown |
| 39 | THERESA H. ESPOSITO (R) | Forsyth | Winston-Salem |
| 39 | FRANK E. RHODES (R) | Forsyth | Winston-Salem |
| 40 | DAVID H. DIAMONT | Surry | Pilot Mountain |
| 40 | JUDY HUNT | Watauga | Blowing Rock |
| 40 | WADE F. WILMOTH | Watauga | Boone |
| 41 | JOHN WALTER BROWN (R) | Wilkes | Elkin |
| 41 | GEORGE M. HOLMES (R) | Yadkin | Yadkinville |
| 42 | LOIS S. WALKER (R) | Iredell | Statesville |
| 43 | C. ROBERT BRAWLEY (R) | Iredell | Moorestville |
| 44 | J. VERNON ABERNETHY (R) | Gaston | Gastonia |
| 44 | DAVID W. BUMGARDNER, JR. | Gaston | Belmont |
| 44 | JOHNATHAN L. RHYNE, JR. (R) | Lincoln | Lincolnton |
| 44 | WALTER H. WINDLEY, III (R) | Gaston | Gastonia |
| 45 | DORIS R. HUFFMAN (R) | Catawba | Newton |
| 45 | W. STINE ISENHOWER (R) | Catawba | Conover |
| 46 | CHARLES F. BUCHANAN (R) | Mitchell | Green Mountain |
| 46 | JAMES F. HUGHES (R) | Avery | Linville |
| 46 | EDGAR VANCE STARNES (R) | Caldwell | Granite Falls |
| 47 | RAY C. FLETCHER | Burke | Valdese |
| 48 | JOHN J. HUNT | Cleveland | Lattimore |
| 48 | EDITH LEDFORD LUTZ | Cleveland | Lawndale |
| 48 | CHARLES D. OWENS | Rutherford | Forest City |
| 49 | ROBERT C. HUNTER | McDowell | Marion |
| 50 | LARRY T. JUSTUS (R) | Henderson | Hendersonville |
| 51 | MARIE W. COLTON | Buncombe | Asheville |
| 51 | NARVEL J. CRAWFORD | Buncombe | Asheville |
| 51 | GORDON H. GREENWOOD | Buncombe | Black Mountain |
| 51 | MARTIN L. NESBITT | Buncombe | Asheville |
| 52 | CHARLES M. BEALL | Haywood | Clyde |
| 52 | LISTON B. RAMSEY | Madison | Marshall |
| 53 | JEFF H. ENLOE, JR. | Macon | Franklin |
| 54 | JOHN B. McLAUGHLIN | Mecklenburg | Newell |
| 55 | C. IVAN MOTHERSHEAD (R) | Mecklenburg | Charlotte |
| 56 | JO GRAHAM FOSTER | Mecklenburg | Charlotte |
| 57 | HARRY GRIMMER (R) | Mecklenburg | Matthews |
| 58 | RUTH M. EASTERLING | Mecklenburg | Charlotte |
| 59 | W. PETE CUNNINGHAM | Mecklenburg | Charlotte |
| 60 | HOWARD C. BARNHILL | Mecklenburg | Charlotte |
| 61 | CASPER HOLROYD | Wake | Raleigh |
| 62 | WILLIAM M. FREEMAN | Wake | Fuquay-Varina |
| 63 | MARGARET STAMEY | Wake | Raleigh |
| 64 | BETTY H. WISER | Wake | Raleigh |
| 65 | AARON E. FUSSELL | Wake | Raleigh |
| 66 | ANNIE BROWN KENNEDY | Forsyth | Winston-Salem |
| 67 | LOGAN BURKE | Forsyth | Winston-Salem |
| 68 | SHARON THOMPSON | Durham | Durham |
| 69 | GEORGE W. MILLER, JR. | Durham | Durham |
| 70 | MILTON F. FITCH, JR. | Wilson | Wilson |
| 71 | LARRY E. ETHERIDGE (R) | Wilson | Wilson |
| 72 | ROY COOPER, III | Nash | Rocky Mount |

LEGISLATIVE SERVICES COMMISSION

SENATE PRESIDENT PRO TEMPORE J. J. HARRINGTON,
Cochairman

HOUSE SPEAKER LISTON BRYAN RAMSEY, *Cochairman*

SEN. J. RICHARD CONDER
SEN. OLLIE HARRIS
SEN. DAVID R. PARNELL
SEN. AARON W. PLYLER
SEN. KENNETH C. ROYALL, JR.
SEN. ROBERT S. SWAIN

REP. DANIEL T. BLUE, JR.
REP. RUTH M. EASTERLING
REP. FOYLE HIGHTOWER, JR.
REP. JOHN J. HUNT
REP. DANIEL T. LILLEY
REP. WILLIAM T. WATKINS

LEGISLATIVE SERVICES STAFF DIRECTORS

| | |
|----------------------|---|
| GEORGE R. HALL, JR. | Legislative Administrative Officer |
| GERRY F. COHEN | Director of Legislative Drafting |
| THOMAS L. COVINGTON | Director of Fiscal Research |
| M. GLENN NEWKIRK | Director of Legislative Automated Systems |
| TERRENCE D. SULLIVAN | Director of Research |
| J. MICHAEL MINSHEW | Building Superintendent and Chief of Security |



PREAMBLE

We, the people of the State of North Carolina, grateful to Almighty God, the Sovereign Ruler of Nations, for the preservation of the American Union and the existence of our civil, political and religious liberties, and acknowledging our dependence upon Him for the continuance of those blessings to us and our posterity, do, for the more certain security thereof and for the better government of this State, ordain and establish this Constitution.

ARTICLE I

DECLARATION OF RIGHTS

That the great, general, and essential principles of liberty and free government may be recognized and established, and that the relations of this State to the Union and government of the United States and those of the people of this State to the rest of the American people may be defined and affirmed, we do declare that:

Section 1. *The equality and rights of persons.* We hold it to be self-evident that all persons are created equal; that they are endowed by their Creator with certain inalienable rights; that among these are life, liberty, the enjoyment of the fruits of their own labor, and the pursuit of happiness.

Sec. 2. *Sovereignty of the people.* All political power is vested in and derived from the people; all government of right originates from the people, is founded upon their will only, and is instituted solely for the good of the whole.

Sec. 3. *Internal government of the State.* The people of this State have the inherent, sole, and exclusive right of regulating the internal government and police thereof, and of altering or abolishing their Constitution and form of government whenever it may be necessary to their safety and happiness; but every such right shall be exercised in pursuance of law and consistently with the Constitution of the United States.

Sec. 4. *Secession prohibited.* This State shall ever remain a member of the American Union; the people thereof are part of the American nation; there is no right on the part of this State to secede; and all attempts from whatever source or upon whatever pretext, to

dissolve this Union or to sever this Nation, shall be resisted with the whole power of the State.

Sec. 5. *Allegiance to the United States.* Every citizen of this State owes paramount allegiance to the Constitution and government of the United States, and no law or ordinance of the State in contravention or subversion thereof can have any binding force.

Sec. 6. *Separation of powers.* The legislative, executive, and supreme judicial powers of the State government shall be forever separate and distinct from each other.

Sec. 7. *Suspending laws.* All power of suspending laws or the execution of laws by any authority, without the consent of the representatives of the people, is injurious to their rights and shall not be exercised.

Sec. 8. *Representation and taxation.* The people of this State shall not be taxed or made subject to the payment of any impost or duty without the consent of themselves or their representatives in the General Assembly, freely given.

Sec. 9. *Frequent elections.* For redress of grievances and for amending and strengthening the laws, elections shall be often held.

Sec. 10. *Free elections.* All elections shall be free.

Sec. 11. *Property qualifications.* As political rights and privileges are not dependent upon or modified by property, no property qualification shall affect the right to vote or hold office.

Sec. 12. *Right of assembly and petition.* The people have a right to assemble together to consult for their common good, to instruct their representatives, and to apply to the General Assembly for redress of grievances; but secret political societies are dangerous to the liberties of a free people and shall not be tolerated.

Sec. 13. *Religious liberty.* All persons have a natural and inalienable right to worship Almighty God according to the dictates of their own consciences, and no human authority shall, in any case whatever, control or interfere with the rights of conscience.

Sec. 14. *Freedom of speech and press.* Freedom of speech and of the press are two of the great bulwarks of liberty and therefore shall

never be restrained, but every person shall be held responsible for their abuse.

Sec. 15. *Education.* The people have a right to the privilege of education, and it is the duty of the State to guard and maintain that right.

Sec. 16. *Ex post facto laws.* Retrospective laws, punishing acts committed before the existence of such laws and by them only declared criminal, are oppressive, unjust, and incompatible with liberty, and therefore no ex post facto law shall be enacted. No law taxing retrospectively sales, purchases, or other acts previously done shall be enacted.

Sec. 17. *Slavery and involuntary servitude.* Slavery is forever prohibited. Involuntary servitude, except as a punishment for crime whereof the parties have been adjudged guilty, is forever prohibited.

Sec. 18. *Court shall be open.* All courts shall be open; every person for an injury done him in his lands, goods, person, or reputation shall have remedy by due course of law; and right and justice shall be administered without favor, denial, or delay.

Sec. 19. *Law of the land; equal protection of the laws.* No person shall be taken, imprisoned, or disseized of his freehold, liberties, or privileges, or outlawed, or exiled, or in any manner deprived of his life, liberty, or property, but by the law of the land. No person shall be denied the equal protection of the laws; nor shall any person be subjected to discrimination by the State because of race, color, religion, or national origin.

Sec. 20. *General warrants.* General warrants, whereby any officer or other person may be commanded to search suspected places without evidence of the act committed, or to seize any person or persons not named, whose offense is not particularly described and supported by evidence, are dangerous to liberty and shall not be granted.

Sec. 21. *Inquiry into restraints on liberty.* Every person restrained of his liberty is entitled to a remedy to inquire into the lawfulness thereof, and to remove the restraint if unlawful, and that remedy shall not be denied or delayed. The privilege of the writ of habeas corpus shall not be suspended.

Sec. 22. *Modes of prosecution.* Except in misdemeanor cases initiated in the District Court Division, no person shall be put to

answer any criminal charge but by indictment, presentment, or impeachment. But any person, when represented by counsel, may, under such regulations as the General Assembly shall prescribe, waive indictment in noncapital cases.

Sec. 23. *Rights of accused.* In all criminal prosecutions, every person charged with crime has the right to be informed of the accusation and to confront the accusers and witnesses with other testimony, and to have counsel for defense, and not be compelled to give self-incriminating evidence, or to pay costs, jail fees, or necessary witness fees of the defense, unless found guilty.

Sec. 24. *Right of jury trial in criminal cases.* No person shall be convicted of any crime but by the unanimous verdict of a jury in open court. The General Assembly may, however, provide for other means of trial for misdemeanors, with the right of appeal for trial de novo.

Sec. 25. *Right of jury trial in civil cases.* In all controversies at law respecting property, the ancient mode of trial by jury is one of the best securities of the rights of the people, and shall remain sacred and inviolable.

Sec. 26. *Jury service.* No person shall be excluded from jury service on account of sex, race, color, religion, or national origin.

Sec. 27. *Bail, fines, and punishments.* Excessive bail shall not be required, nor excessive fines imposed, nor cruel or unusual punishments inflicted.

Sec. 28. *Imprisonment for debt.* There shall be no imprisonment for debt in this State, except in cases of fraud.

Sec. 29. *Treason against the State.* Treason against the State shall consist only of levying war against it or adhering to its enemies by giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court. No conviction of treason or attainder shall work corruption of blood or forfeiture.

Sec. 30. *Militia and the right to bear arms.* A well regulated militia being necessary to the security of a free State, the right of the people to keep and bear arms shall not be infringed; and, as standing armies in time of peace are dangerous to liberty, they shall not be maintained, and the military shall be kept under strict subordination to, and governed by, the civil power. Nothing herein shall justify the

practice of carrying concealed weapons, or prevent the General Assembly from enacting penal statutes against that practice.

Sec. 31. *Quartering of soldiers.* No soldier shall in time of peace be quartered in any house without the consent of the owner, nor in time of war but in a manner prescribed by law.

Sec. 32. *Exclusive emoluments.* No person or set of persons is entitled to exclusive or separate emoluments or privileges from the community but in consideration of public services.

Sec. 33. *Hereditary emoluments and honors.* No hereditary emoluments, privileges, or honors shall be granted or conferred in this State.

Sec. 34. *Perpetuities and monopolies.* Perpetuities and monopolies are contrary to the genius of a free state and shall not be allowed.

Sec. 35. *Recurrence to fundamental principals.* A frequent recurrence to fundamental principles is absolutely necessary to preserve the blessings of liberty.

Sec. 36. *Other rights of the people.* The enumeration of rights in this Article shall not be construed to impair or deny others retained by the people.

ARTICLE II

LEGISLATIVE

Section 1. *Legislative power.* The legislative power of the State shall be vested in the General Assembly, which shall consist of a Senate and a House of Representatives.

Sec. 2. *Number of Senators.* The Senate shall be composed of 50 Senators, biennially chosen by ballot.

Sec. 3. *Senate districts; apportionment of Senators.* The Senators shall be elected from districts. The General Assembly, at the first regular session convening after the return of every decennial census of population taken by order of Congress, shall revise the senate districts and the apportionment of Senators among those districts, subject to the following requirements:

(1) Each Senator shall represent, as nearly as may be, an equal number of inhabitants, the number of inhabitants that each Senator represents being determined for this purpose by dividing the population of the District that he represents by the number of Senators apportioned to that district;

(2) Each senate district shall at all times consist of contiguous territory;

(3) No county shall be divided in the formation of a senate district;

(4) When established, the senate districts and the apportionment of Senators shall remain unaltered until the return of another decennial census of population taken by order of Congress.

Sec. 4. *Number of Representatives.* The House of Representatives shall be composed of 120 Representatives, biennially chosen by ballot.

Sec. 5. *Representative districts; apportionment of Representatives.* The Representatives shall be elected from districts. The General Assembly, at the first regular session convening after the return of every decennial census of population taken by order of Congress, shall revise the representative districts and the apportionment of Representatives among those districts, subject to the following requirements:

(1) Each Representative shall represent, as nearly as may be, an equal number of inhabitants, the number of inhabitants that each Representative represents being determined for this purpose by dividing the population of the district that he represents by the number of Representatives apportioned to that district;

(2) Each representative district shall at all times consist of contiguous territory;

(3) No county shall be divided in the formation of a representative district;

(4) When established, the representative districts and the apportionment of Representatives shall remain unaltered until the return of another decennial census of population taken by order of Congress.

Sec. 6. *Qualifications for Senator.* Each Senator, at the time of his election, shall be not less than 25 years of age, shall be a qualified

voter of the State, and shall have resided in the State as a citizen for two years and in the district for which he is chosen for one year immediately preceding his election.

Sec. 7. *Qualifications for Representative.* Each Representative, at the time of his election, shall be a qualified voter of the State, and shall have resided in the district for which he is chosen for one year immediately preceding his election.

Sec. 8. *Elections.* The election for members of the General Assembly shall be held for the respective districts in 1972 and every two years thereafter, at the places and on the day prescribed by law.

Sec. 9. *Term of office.* The term of office of Senators and Representatives shall commence on the first day of January next after their election.

Sec. 10. *Vacancies.* Every vacancy occurring in the membership of the General Assembly by reason of death, resignation, or other cause shall be filled in the manner prescribed by law.

Sec. 11. *Sessions.*

(1) *Regular Sessions.* The General Assembly shall meet in regular session in 1973 and every two years thereafter on the day prescribed by law. Neither house shall proceed upon public business unless a majority of all of its members are actually present.

(2) *Extra sessions on legislative call.* The President of the Senate and the Speaker of the House of Representatives shall convene the General Assembly in extra session by their joint proclamation upon receipt by the President of the Senate of written requests therefor signed by three-fifths of all the members of the Senate and upon receipt by the Speaker of the House of Representatives of written requests therefor signed by three-fifths of all the members of the House of Representatives.

Sec. 12. *Oath of members.* Each member of the General Assembly, before taking his seat, shall take an oath or affirmation that he will support the Constitution and laws of the United States and the Constitution of the State of North Carolina, and will faithfully discharge his duty as a member of the Senate or House of Representatives.

Sec. 13. *President of the Senate.* The Lieutenant Governor shall be President of the Senate and shall preside over the Senate, but shall have no vote unless the Senate is equally divided.

Sec. 14. *Other officers of the Senate.*

(1) *President Pro Tempore - succession to presidency.* The Senate shall elect from its membership a President Pro Tempore, who shall become President of the Senate upon the failure of the Lieutenant Governor-elect to qualify, or upon succession by the Lieutenant Governor to the office of Governor, or upon the death, resignation, or removal from office of the President of the Senate, and who shall serve until the expiration of his term of office as Senator.

(2) *President Pro Tempore - temporary succession.* During the physical or mental incapacity of the President of the Senate to perform the duties of his office, or during the absence of the President of the Senate, the President Pro Tempore shall preside over the Senate.

(3) *Other officers.* The Senate shall elect its other officers.

Sec. 15. *Officers of the House of Representatives.* The House of Representatives shall elect its Speaker and other officers.

Sec. 16. *Compensation and allowances.* The members and officers of the General Assembly shall receive for their services the compensation and allowances prescribed by law. An increase in the compensation or allowances of members shall become effective at the beginning of the next regular session of the General Assembly following the session at which it was enacted.

Sec. 17. *Journals.* Each house shall keep a journal of its proceedings, which shall be printed and made public immediately after the adjournment of the General Assembly.

Sec. 18. *Protests.* Any member of either house may dissent from and protest against any act or resolve which he may think injurious to the public or to any individual, and have the reasons of his dissent entered on the journal.

Sec. 19. *Record votes.* Upon motion made in either house and seconded by one fifth of the members present, the yeas and nays upon any question shall be taken and entered upon the journal.

Sec. 20. *Powers of the General Assembly.* Each house shall be judge of the qualifications and elections of its own members, shall sit upon its own adjournment from day to day, and shall prepare bills to be enacted into laws. The two houses may jointly adjourn to any future day or other place. Either house may, of its own motion, adjourn for a period not in excess of three days.

Sec. 21. *Style of the acts.* The style of the acts shall be: "The General Assembly of North Carolina enacts:"

Sec. 22. *Action on bills.* All bills and resolutions of a legislative nature shall be read three times in each house before they become laws, and shall be signed by the presiding officers of both houses.

Sec. 23. *Revenue bills.* No laws shall be enacted to raise money on the credit of the State, or to pledge the faith of the State directly or indirectly for the payment of any debt, or to impose any tax upon the people of the State, or to allow the counties, cities, or towns to do so, unless the bill for the purpose shall have been read three several times in each house of the General Assembly and passed three several readings, which readings shall have been on three different days, and shall have been agreed to by each house respectively, and unless the yeas and nays on the second and third readings of the bill shall have been entered on the journal.

Sec. 24. *Limitations on local, private, and special legislation.*

(1) *Prohibited subjects.* The General Assembly shall not enact any local, private, or special act or resolution:

- (a) Relating to health, sanitation, and the abatement of nuisances;
- (b) Changing the names of cities, towns, and townships;
- (c) Authorizing the laying out, opening, altering, maintaining, or discontinuing of highways, streets, or alleys;
- (d) Relating to ferries or bridges;
- (e) Relating to non-navigable streams;
- (f) Relating to cemeteries;
- (g) Relating to the pay of jurors;

- (h) Erecting new townships, or changing township lines, or establishing or changing the lines of school districts;
- (i) Remitting fines, penalties, and forfeitures, or refunding moneys legally paid into the public treasury;
- (j) Regulating labor, trade, mining, or manufacturing;
- (k) Extending the time for the levy or collection of taxes or otherwise relieving any collector of taxes from the due performance of his official duties or his sureties from liability;
- (l) Giving effect to informal wills and deeds;
- (m) Granting a divorce or securing alimony in any individual case;
- (n) Altering the name of any person, or legitimating any person not born in lawful wedlock, or restoring to the rights of citizenship any person convicted of a felony.

(2) *Repeals.* Nor shall the General Assembly enact any such local, private, or special act by partial repeal of a general law; but the General Assembly may at any time repeal local, private, or special laws enacted by it.

(3) *Prohibited acts void.* Any local, private, or special act or resolution enacted in violation of the provisions of this Section shall be void.

(4) *General laws.* The General Assembly may enact general laws regulating the matters set out in this Section.

ARTICLE III

EXECUTIVE

Section 1. *Executive power.* The executive power of the State shall be vested in the Governor.

Sec. 2. *Governor and Lieutenant Governor: election, term, and qualifications.*

(1) *Election and term.* The Governor and Lieutenant Governor shall be elected by the qualified voters of the State in 1972 and every four years thereafter, at the same time and places as members of the

General Assembly are elected. Their term of office shall be four years and shall commence on the first day of January next after their election and continue until their successors are elected and qualified.

(2) *Qualifications.* No person shall be eligible for election to the office of Governor or Lieutenant Governor unless, at the time of his election, he shall have attained the age of 30 years and shall have been a citizen of the United States for five years and a resident of this State for two years immediately preceding his election. No person elected to the Office of Governor or Lieutenant Governor shall be eligible for election to more than two consecutive terms of the same office.

Sec. 3. *Succession to office of Governor.*

(1) *Succession as Governor.* The Lieutenant Governor-elect shall become Governor upon the failure of the Governor-elect to qualify. The Lieutenant Governor shall become Governor upon the death, resignation, or removal from office of the Governor. The further order of succession to the office of Governor shall be prescribed by law. A successor shall serve for the remainder of the term of the Governor whom he succeeds and until a new Governor is elected and qualified.

(2) *Succession as Acting Governor.* During the absence of the Governor from the State, or during the physical or mental incapacity of the Governor to perform the duties of his office, the Lieutenant Governor shall be Acting Governor. The further order of succession as Acting Governor shall be prescribed by law.

(3) *Physical incapacity.* The Governor may, by a written statement filed with the Attorney General, declare that he is physically incapable of performing the duties of his office, and may thereafter in the same manner declare that he is physically capable of performing the duties of his office.

(4) *Mental incapacity.* The mental incapacity of the Governor to perform the duties of his office shall be determined only by joint resolution adopted by a vote of two-thirds of all the members of each house of the General Assembly. Thereafter, the mental capacity of the Governor to perform the duties of his office shall be determined only by joint resolution adopted by a vote of a majority of all the members of each house of the General Assembly. In all cases, the General Assembly shall give the Governor such notice as it may deem proper and shall allow him an opportunity to be heard before a joint

session of the General Assembly before it takes final action. When the General Assembly is not in session, the Council of State, a majority of its members concurring, may convene it in extra session for the purpose of proceeding under this paragraph.

(5) *Impeachment.* Removal of the Governor from office for any other cause shall be by impeachment.

Sec. 4. *Oath of office for Governor.* The Governor, before entering upon the duties of his office, shall, before any Justice of the Supreme Court, take an oath or affirmation that he will support the Constitution and laws of the United States and of the State of North Carolina, and that he will faithfully perform the duties pertaining to the office of governor.

Sec. 5. *Duties of Governor.*

(1) *Residence.* The Governor shall reside at the seat of government of this State.

(2) *Information to General Assembly.* The Governor shall from time to time give the General Assembly information of the affairs of the State and recommend to their consideration such measures as he shall deem expedient.

(3) *Budget.* The Governor shall prepare and recommend to the General Assembly a comprehensive budget of the anticipated revenue and proposed expenditures of the State for the ensuing fiscal period. The budget as enacted by the General Assembly shall be administered by the Governor.

The total expenditures of the State for the fiscal period covered by the budget shall not exceed the total of receipts during that fiscal period and the surplus remaining in the State Treasury at the beginning of the period. To insure that the State does not incur a deficit for any fiscal period, the Governor shall continually survey the collection of the revenue and shall effect the necessary economies in State expenditures, after first making adequate provision for the prompt payment of the principal of and interest on bonds and notes of the State according to their terms, whenever he determines that receipts during the fiscal period, when added to any surplus remaining in the State Treasury at the beginning of the period, will not be sufficient to meet budgeted expenditures. This section shall not be construed to impair the power of the State to issue its bonds and notes within the limitations imposed in Article V of this Constitution, nor to

impair the obligation of bonds and notes of the State now outstanding or issued hereafter.

(4) *Execution of laws.* The Governor shall take care that the laws be faithfully executed.

(5) *Commander in Chief.* The Governor shall be Commander in Chief of the military forces of the State except when they shall be called into the service of the United States.

(6) *Clemency.* The Governor may grant reprieves, commutations, and pardons, after conviction, for all offenses (except in cases of impeachment), upon such conditions as he may think proper, subject to regulations prescribed by law relative to the manner of applying for pardons. The terms reprieves, commutations, and pardons shall not include paroles.

(7) *Extra sessions.* The Governor may, on extraordinary occasions, by and with the advice of the Council of State, convene the General Assembly in extra session by his proclamation, stating therein the purpose or purposes for which they are thus convened.

(8) *Appointments.* The Governor shall nominate and by and with the advice and consent of a majority of the Senators appoint all officers whose appointments are not otherwise provided for.

(9) *Information.* The Governor may at any time require information in writing from the head of any administrative department or agency upon any subject relating to the duties of his office.

(10) *Administrative reorganization.* The General Assembly shall prescribe the functions, powers, and duties of the administrative departments and agencies of the State and may alter them from time to time, but the Governor may make such changes in the allocation of offices and agencies and in the allocation of those functions, powers, and duties as he considers necessary for efficient administration. If those changes affect existing law, they shall be set forth in executive orders, which shall be submitted to the General Assembly not later than the sixtieth calendar day of its session, and shall become effective and shall have the force of law upon adjournment sine die of the session, unless specifically disapproved by resolution of either house of the General Assembly or specifically modified by joint resolution of both houses of the General Assembly.

Sec. 6. *Duties of the Lieutenant Governor.* The Lieutenant Governor shall be President of the Senate, but shall have no vote unless the Senate is equally divided. He shall perform such additional duties as the General Assembly or the Governor may assign to him. He shall receive the compensation and allowances prescribed by law.

Sec. 7. *Other elective officers.*

(1) *Officers.* A Secretary of State, an Auditor, a Treasurer, a Superintendent of Public Instruction, an Attorney General, a Commissioner of Agriculture, a Commissioner of Labor, and a Commissioner of Insurance shall be elected by the qualified voters of the State in 1972 and every four years thereafter, at the same time and places as members of the General Assembly are elected. Their term of office shall be four years and shall commence on the first day of January next after their election and continue until their successors are elected and qualified.

(2) *Duties.* Their respective duties shall be prescribed by law.

(3) *Vacancies.* If the office of any of these officers is vacated by death, resignation, or otherwise, it shall be the duty of the Governor to appoint another to serve until his successor is elected and qualified. Every such vacancy shall be filled by election at the first election for members of the General Assembly that occurs more than 60 days after the vacancy has taken place, and the person chosen shall hold the office for the remainder of the unexpired term fixed in this Section. When a vacancy occurs in the office of any of the officers named in this Section and the term expires on the first day of January succeeding the next election for members of the General Assembly, the Governor shall appoint to fill the vacancy for the unexpired term of the office.

(4) *Interim officers.* Upon the occurrence of a vacancy in the office of any one of these officers for any of the causes stated in the preceding paragraphs, the Governor may appoint an interim officer to perform the duties of that office until a person is appointed or elected pursuant to this Section to fill the vacancy and is qualified.

(5) *Acting officers.* During the physical or mental incapacity of any one of these officers to perform the duties of his office, as determined pursuant to this Section, the duties of his office shall be performed by an acting officer who shall be appointed by the Governor.

(6) *Determination of incapacity.* The General Assembly shall by law prescribe with respect to those officers, other than the Governor, whose offices are created by this Article, procedures for determining the physical or mental incapacity of any officer to perform the duties of his office, and for determining whether an officer who has been temporarily incapacitated has sufficiently recovered his physical or mental capacity to perform the duties of his office. Removal of those officers from office for any other cause shall be by impeachment.

(7) *Special Qualifications for Attorney General.* Only persons duly authorized to practice law in the courts of this State shall be eligible for appointment or election as Attorney General.

Sec. 8. *Council of State.* The Council of State shall consist of the officers whose offices are established by this Article.

Sec. 9. *Compensation and allowances.* The officers whose offices are established by this Article shall at stated periods receive the compensation and allowances prescribed by law, which shall not be diminished during the time for which they have been chosen.

Sec. 10. *Seal of State.* There shall be a seal of the State, which shall be kept by the Governor and used by him as occasion may require, and shall be called "The Great Seal of the State of North Carolina." All grants or commissions shall be issued in the name and by the authority of the State of North Carolina, sealed with "The Great Seal of the State of North Carolina," and signed by the Governor.

Sec. 11. *Administrative departments.* Not later than July 1, 1975, all administrative departments, agencies, and offices of the State and their respective functions, powers, and duties shall be allocated by law among and within not more than 25 principal administrative departments so as to group them as far as practicable according to major purposes. Regulatory, quasi-judicial, and temporary agencies may, but need not, be allocated within a principal department.

ARTICLE IV

JUDICIAL

Section 1. *Judicial Power.* The judicial power of the State shall, except as provided in Section 3 of this Article, be vested in a Court for the Trial of Impeachments and in a General Court of Justice. The General Assembly shall have no power to deprive the judicial

department of any power or jurisdiction that rightfully pertains to it as a coordinate department of the government, nor shall it establish or authorize any courts other than as permitted by this Article.

Sec. 2. *General Court of Justice.* The General Court of Justice shall constitute a unified judicial system for purposes of jurisdiction, operation, and administration, and shall consist of an Appellate Division, a Superior Court Division, and a District Court Division.

Sec. 3. *Judicial powers of administrative agencies.* The General Assembly may vest in administrative agencies established pursuant to law such judicial powers as may be reasonably necessary as an incident to the accomplishment of the purposes for which the agencies were created. Appeals from administrative agencies shall be to the General Court of Justice.

Sec. 4. *Court for the Trial of Impeachments.* The House of Representatives solely shall have the power of impeaching. The Court for the Trial of Impeachments shall be the Senate. When the Governor or Lieutenant Governor is impeached, the Chief Justice shall preside over the Court. A majority of members shall be necessary to a quorum, and no person shall be convicted without the concurrence of two-thirds of the Senators present. Judgment upon conviction shall not extend beyond removal from and disqualification to hold office in this State, but the party shall be liable to indictment and punishment according to law.

Sec. 5. *Appellate division.* The Appellate Division of the General Court of Justice shall consist of the Supreme Court and the Court of Appeals.

Sec. 6. *Supreme Court.*

(1) *Membership.* The Supreme Court shall consist of a Chief Justice and six Associate Justices, but the General Assembly may increase the number of Associate Justices to not more than eight. In the event the Chief Justice is unable, on account of absence or temporary incapacity, to perform any of the duties placed upon him, the senior Associate Justice available may discharge these duties.

(2) *Sessions of the Supreme Court.* The sessions of the Supreme Court shall be held in the City of Raleigh unless otherwise provided by the General Assembly.

Sec. 7. *Court of Appeals.* The structure, organization, and composition of the Court of Appeals shall be determined by the General Assembly. The Court shall have not less than five members, and may be authorized to sit in divisions, or other than en banc. Sessions of the Court shall be held at such times and places as the General Assembly may prescribe.

Sec. 8. *Retirement of Justices and Judges.* The General Assembly shall provide by general law for the retirement of Justices and Judges of the General Court of Justice, and may provide for the temporary recall of any retired Justice or Judge to serve on the court or courts of the division from which he was retired. The General Assembly shall also prescribe maximum age limits service as a Justice of Judge.

Sec. 9. *Superior Courts.*

(1) *Superior Court districts.* The General Assembly shall, from time to time, divide the State into a convenient number of Superior Court judicial districts and shall provide for the election of one or more Superior Court Judges for each district. Each regular Superior Court Judge shall reside in the district for which he is elected. The General Assembly may provide by general law for the selection or appointment of special or emergency Superior Court Judges not selected for a particular judicial district.

(2) *Open at all times; sessions for trial of cases.* The Superior Courts shall be open at all times for the transaction of all business except the trial of issues of fact requiring a jury. Regular trial sessions of the Superior Court shall be held at times fixed pursuant to a calendar of courts promulgated by the Supreme Court. At least two sessions for the trial of jury cases shall be held annually in each county.

(3) *Clerks.* A Clerk of the Superior Court for each county shall be elected for a term of four years by the qualified voters thereof, at the same time and places as members of the General Assembly are elected. If the office of Clerk of the Superior Court becomes vacant otherwise than by the expiration of the term, or if the people fail to elect, the senior regular resident Judge of the Superior Court serving the county shall appoint to fill the vacancy until an election can be regularly held.

Sec. 10. *District Courts.* The General Assembly shall, from time to time, divide the State into a convenient number of local court districts and shall prescribe where the District Courts shall sit, but a District

Court must sit in at least one place in each county. District Judges shall be elected for each district for a term of four years, in a manner prescribed by law. When more than one District Judge is authorized and elected for a district, the Chief Justice of the Supreme Court shall designate one of the judges as Chief District Judge. Every District Judge shall reside in the district for which he is elected. For each county, the senior regular resident Judge of the Superior Court serving the county shall appoint for a term of two years, from nominations submitted by the Clerk of the Superior Court of the county, one or more Magistrates who shall be officers of the District Court. The number of District Judges and Magistrates shall, from time to time, be determined by the General Assembly. Vacancies in the office of District Judge shall be filled for the unexpired term in a manner prescribed by law. Vacancies in the office of Magistrate shall be filled for the unexpired term in the manner provided for original appointment to the office.

Sec. 11. *Assignment of Judges.* The Chief Justice of the Supreme Court, acting in accordance with rules of the Supreme Court, shall make assignments of Judges of the Superior Court and may transfer District Judges from one district to another for temporary or specialized duty. The principle of rotating Superior Court Judges among the various districts of a division is a salutary one and shall be observed. For this purpose the General Assembly may divide the State into a number of judicial divisions. Subject to the general supervision of the Chief Justice of the Supreme Court, assignment of District Judges within each local court district shall be made by the Chief District Judge.

Sec. 12. *Jurisdiction of the General Court of Justice.*

(1) *Supreme Court.* The Supreme Court shall have jurisdiction to review upon appeal any decision of the courts below, upon any matter of law or legal inference. The jurisdiction of the Supreme Court over "issues of fact" and "questions of fact" shall be the same exercised by it prior to the adoption of this Article, and the Court may issue any remedial writs necessary to give it general supervision and control over the proceedings of the other courts. The Supreme Court also has jurisdiction to review, when authorized by law, direct appeals from a final order or decision of the North Carolina Utilities Commission.

(2) *Court of Appeals.* The Court of Appeals shall have such appellate jurisdiction as the General Assembly may prescribe.

(3) *Superior Court.* Except as otherwise provided by the General Assembly, the Superior Court shall have original general jurisdiction throughout the State. The Clerks of the Superior Court shall have such jurisdiction and powers as the General Assembly shall prescribe by general law uniformly applicable in every county of the State.

(4) *District Courts; Magistrates.* The General Assembly shall, by general law uniformly applicable in every local court district of the State, prescribe the jurisdiction and powers of the District Courts and Magistrates.

(5) *Waiver.* The General Assembly may by general law provide that the jurisdictional limits may be waived in civil cases.

(6) *Appeals.* The General Assembly shall by general law provide a proper system of appeals. Appeals from Magistrates shall be heard de novo, with the right of trial by jury as defined in this Constitution and the laws of this State.

Sec. 13. *Forms of action; rules of procedure.*

(1) *Forms of action.* There shall be in this State but one form of action for the enforcement or protection of private rights or the redress of private wrongs, which shall be denominated a civil action, and in which there shall be a right to have issues of fact tried before a jury. Every action prosecuted by the people of the State as a party against a person charged with a public offense, for the punishment thereof, shall be termed a criminal action.

(2) *Rules of procedure.* The Supreme Court shall have exclusive authority to make rules of procedure and practice for the Appellate Division. The General Assembly may make rules of procedure and practice for the Superior Court and District Court Divisions, and the General Assembly may delegate this authority to the Supreme Court. No rule of procedure or practice shall abridge substantive rights or abrogate or limit the right of trial by jury. If the General Assembly should delegate to the Supreme Court the rule-making power, the General Assembly may, nevertheless, alter, amend, or repeal any rule of procedure or practice adopted by the Supreme Court for the Superior Court or District Court Divisions.

Sec. 14. *Waiver of jury trial.* In all issues of fact joined in any court, the parties in any civil case may waive the right to have the issues determined by a jury, in which case the finding of the judge upon the facts shall have the force and effect of a verdict by a jury.

Sec. 15. *Administration.* The General Assembly shall provide for an administrative office of the courts to carry out the provisions of this Article.

Sec. 16. *Terms of office and election of Justices of the Supreme Court, Judges of the Court of Appeals, and Judges of the Superior Court.* Justices of the Supreme Court, Judges of the Court of Appeals, and regular Judges of the Superior Court shall be elected by the qualified voters and shall hold office for terms of eight years and until their successors are elected and qualified. Justices of the Supreme Court and Judges of the Court of Appeals shall be elected by the qualified voters of the State. Regular Judges of the Superior Court may be elected by the qualified voters of the State or by the voters of their respective districts, as the General Assembly may prescribe.

Sec. 17. *Removal of Judges, Magistrates and Clerks.*

(1) *Removal of Judges by the General Assembly.* Any Justice or Judge of the General Court of Justice may be removed from office for mental or physical incapacity by joint resolution of two-thirds of all the members of each house of the General Assembly. Any Justice or Judge against whom the General Assembly may be about to proceed shall receive notice thereof, accompanied by a copy of the causes alleged for his removal, at least 20 days before the day on which either house of the General Assembly shall act thereon. Removal from office by the General Assembly for any other cause shall be by impeachment.

(2) *Additional method of removal of Judges.* The General Assembly shall prescribe a procedure, in addition to impeachment and address set forth in this Section, for the removal of a Justice or Judge of the General Court of Justice for mental or physical incapacity interfering with the performance of his duties which is, or is likely to become, permanent, and for the censure and removal of a Justice or Judge of the General Court of Justice for wilful misconduct in office, wilful and persistent failure to perform his duties, habitual intemperance, conviction of a crime involving moral turpitude, or conduct prejudicial to the administration of justice that brings the judicial office into disrepute.

(3) *Removal of Magistrates.* The General Assembly shall provide by general law for the removal of Magistrates for misconduct or mental or physical incapacity.

(4) *Removal of Clerks.* Any Clerk of the Superior Court may be removed from office for misconduct or mental or physical incapacity by the senior regular resident Superior Court Judge serving the county. Any Clerk against whom proceedings are instituted shall receive written notice of the charges against him at least ten days before the hearing upon the charges. Any Clerk so removed from office shall be entitled to an appeal as provided by law.

Sec. 18. *District Attorney and Prosecutorial Districts.*

(1) *District Attorneys.* The General Assembly shall, from time to time, divide the State into a convenient number of prosecutorial districts, for each of which a District Attorney shall be chosen for a term of four years by the qualified voters thereof, at the same time and places as members of the General Assembly are elected. Only persons duly authorized to practice law in the courts of this State shall be eligible for election or appointment as a District Attorney. The District Attorney shall advise the officers of justice in his district, be responsible for the prosecution on behalf of the State of all criminal actions in the Superior Courts of his district, perform such duties related to appeals therefrom as the Attorney General may require, and perform such other duties as the General Assembly may prescribe.

(2) *Prosecution in District Court Division.* Criminal actions in the District Court Division shall be prosecuted in such manner as the General Assembly may prescribe by general law uniformly applicable in every local court district of the State.

Sec. 19. *Vacancies.* Unless otherwise provided in this Article, all vacancies occurring in the offices provided for by this Article shall be filled by appointment of the Governor, and the appointees shall hold their places until the next election for members of the General Assembly that is held more than 60 days after the vacancy occurs, when elections shall be held to fill the offices. When the unexpired term of any of the offices named in this Article of the Constitution in which a vacancy has occurred, and in which it is herein provided that the Governor shall fill the vacancy, expires on the first day of January succeeding the next election for members of the General Assembly, the Governor shall appoint to fill that vacancy for the unexpired term of the office. If any person elected or appointed to any of these offices shall fail to qualify, the office shall be appointed to, held and filled as provided in case of vacancies occurring therein. All incumbents of these offices shall hold until their successors are qualified.

Sec. 20. *Revenues and expenses of the judicial department.* The General Assembly shall provide for the establishment of a schedule of court fees and costs which shall be uniform throughout the State within each division of the General Court of Justice. The operating expenses of the judicial department, other than compensation to process servers and other locally paid non-judicial officers, shall be paid from State funds.

Sec. 21. *Fees, salaries and emoluments.* The General Assembly shall prescribe and regulate the fees, salaries, and emoluments of all officers provided for in this Article, but the salaries of Judges shall not be diminished during their continuance in office. In no case shall the compensation of any Judge or Magistrate be dependent upon his decision or upon the collection of costs.

Sec. 22. *Qualification of Justices and Judges.* Only persons duly authorized to practice law in the courts of this State shall be eligible for election or appointment as a Justice of the Supreme Court, Judge of the Court of Appeals, Judge of the Superior Court, or Judge of District Court. This section shall not apply to persons elected to or serving in such capacities on or before January 1, 1981.

ARTICLE V

FINANCE

Section 1. *No capitation tax to be levied.* No poll or capitation tax shall be levied by the General Assembly or by any county, city or town, or other taxing unit.

Sec. 2. *State and local taxation.*

(1) *Power of taxation.* The power of taxation shall be exercised in a just and equitable manner, for public purpose only, and shall never be surrendered, suspended, or contracted away.

(2) *Classification.* Only the General Assembly shall have the power to classify property for taxation, which power shall be exercised only on a State-wide basis and shall not be delegated. No class of property shall be taxed except by uniform rule, and every classification shall be made by general law uniformly applicable in every county, city and town, and other unit of local government.

(3) *Exemptions.* Property belonging to the State, counties, and municipal corporations shall be exempt from taxation. The General

Assembly may exempt cemeteries and property held for educational, scientific, literary, cultural, charitable, or religious purposes, and, to a value not exceeding \$300, any personal property. The General Assembly may exempt from taxation not exceeding \$1,000 in value of property held and used as the place of residence of the owner. Every exemption shall be on a State-wide basis and shall be made by general law uniformly applicable in every county, city and town, and other unit of local government. No taxing authority other than the General Assembly may grant exemptions, and the General Assembly shall not delegate the powers accorded to it by this subsection.

(4) *Special tax areas.* Subject to the limitations imposed by Section 4, the General Assembly may enact general laws authorizing the governing body of any county, city or town to define territorial areas and to levy taxes within those areas, in addition to those levied throughout the county, city or town, in order to finance, provide, or maintain services, facilities, and functions in addition to or to a greater extent than those financed, provided or maintained for the entire county, city or town.

(5) *Purposes of property tax.* The General Assembly shall not authorize any county, city or town, special district, or other unit of local government to levy taxes on property, except for purposes authorized by general law uniformly applicable throughout the State, unless the tax is approved by a majority of the qualified voters of the unit who vote thereon.

(6) *Income tax.* The rate of tax on incomes shall not in any case exceed ten percent, and there shall be allowed personal exemptions and deductions so that only net incomes are taxed.

(7) *Contracts.* The General Assembly may enact laws whereby the State, any county, city or town, and any other public corporation may contract with and appropriate money to any person, association, or corporation for the accomplishment of public purposes only.

Sec. 3. *Limitations upon the increase of State debt.*

(1) *Authorized purposes; two-thirds limitation.* The General Assembly shall have no power to contract debts secured by a pledge of the faith and credit of the State, unless approved by a majority of the qualified voters of the State who vote thereon, except for the following purposes:

- (a) to fund or refund a valid existing debt;

- (b) to supply an unforeseen deficiency in the revenue;
- (c) to borrow in anticipation of the collection of taxes due and payable within the current fiscal year to an amount not exceeding 50 per cent of such taxes;
- (d) to suppress riots or insurrections, or to repel invasions;
- (e) to meet emergencies immediately threatening the public health or safety, as conclusively determined in writing by the Governor;
- (f) for any other lawful purpose, to the extent of two-thirds of the amount by which the State's outstanding indebtedness shall have been reduced during the next preceding biennium.

(2) *Gift or loan of credit regulated.* The General Assembly shall have no power to give or lend the credit of the State in aid of any person, association, or corporation, except a corporation in which the State has a controlling interest, unless the subject is submitted to a direct vote of the people of the State, and is approved by a majority of the qualified voters who vote thereon.

(3) *Definitions.* A debt is incurred within the meaning of this Section when the State borrows money. A pledge of the faith and credit within the meaning of this Section is a pledge of the taxing power. A loan of credit within the meaning of this Section occurs when the State exchanges its obligations with or in any way guarantees the debts of an individual, association or private corporation.

(4) *Certain debts barred.* The General Assembly shall never assume or pay any debt or obligation, express or implied, incurred in aid of insurrection or rebellion against the United States. Neither shall the General Assembly assume or pay any debt or bond incurred or issued by authority of the Convention of 1868, the special session of the General Assembly of 1868, or the General Assemblies of 1868-69 and 1869-70, unless the subject is submitted to the people of the State and is approved by a majority of all the qualified voters at a referendum held for that sole purpose.

(5) *Outstanding debt.* Except as provided in subsection (4), nothing in this Section shall be construed to invalidate or impair the obligation of any bond, note, or other evidence of indebtedness outstanding or authorized for issue as of July 1, 1973.

Sec. 4. *Limitations upon the increase of local government debt.*

(1) *Regulation of borrowing and debt.* The General Assembly shall enact general laws relating to the borrowing of money secured by a pledge of the faith and credit and the contracting of other debts by counties, cities and towns, special districts, and other units, authorities, and agencies of local government.

(2) *Authorized purposes; two-thirds limitation.* The General Assembly shall have no power to authorize any county, city or town, special district, or other unit of local government to contract debts secured by a pledge of its faith and credit unless approved by a majority of the qualified voters of the unit who vote thereon, except for the following purposes:

- (a) to fund or refund a valid existing debt;
- (b) to supply an unforeseen deficiency in the revenue;
- (c) to borrow in anticipation of the collection of taxes due and payable within the current fiscal year to an amount not exceeding 50 per cent of such taxes;
- (d) to suppress riots or insurrections;
- (e) to meet emergencies immediately threatening the public health or safety, as conclusively determined in writing by the Governor;
- (f) for purposes authorized by general laws uniformly applicable throughout the State, to the extent of two-thirds of the amount by which the unit's outstanding indebtedness shall have been reduced during the next preceding fiscal year.

(3) *Gift or loan of credit regulated.* No county, city or town, special district, or other unit of local government shall give or lend its credit in aid of any person, association, or corporation, except for public purposes as authorized by general law, and unless approved by a majority of the qualified voters of the unit who vote thereon.

(4) *Certain debts barred.* No county, city or town, or other unit of local government shall assume or pay any debt or the interest thereon contracted directly or indirectly in aid or support of rebellion or insurrection against the United States.

(5) *Definitions.* A debt is incurred within the meaning of this Section when a county, city or town, special district, or other unit, authority, or agency of local government borrows money. A pledge of faith and credit within the meaning of this Section is a pledge of the

taxing power. A loan of credit within the meaning of this Section occurs when a county, city or town, special district, or other unit, authority, or agency of local government exchanges its obligations with or in any way guarantees the debts of an individual, association, or private corporation.

(6) *Outstanding debt.* Except as provided in subsection (4), nothing in this Section shall be construed to invalidate or impair the obligation of any bond, note, or other evidence of indebtedness outstanding or authorized for issue as of July 1, 1973.

Sec. 5. *Acts levying taxes to state objects.* Every act of the General Assembly levying a tax shall state the special object to which it is to be applied, and it shall be applied to no other purpose.

Sec. 6. *Inviolability of sinking funds and retirement funds.*

(1) *Sinking funds.* The General Assembly shall not use or authorize to be used any part of the amount of any sinking fund for any purpose other than the retirement of the bonds for which the sinking fund has been created, except that these funds may be invested as authorized by law.

(2) *Retirement funds.* Neither the General Assembly nor any public officer, employee, or agency shall use or authorize to be used any part of the funds of the Teachers' and State Employees' Retirement System or the Local Governmental Employees' Retirement System for any purpose other than retirement system benefits and purposes, administrative expenses, and refunds; except that retirement system funds may be invested as authorized by law, subject to the investment limitation that the funds of the Teachers' and State Employees' Retirement System and the Local Governmental Employees' Retirement System shall not be applied, diverted, loaned to, or used by the State, any State agency, State officer, public officer, or public employee.

Sec. 7. *Drawing public money.*

(1) *State treasury.* No money shall be drawn from the State Treasury but in consequence of appropriations made by law, and an accurate account of the receipts and expenditures of State funds shall be published annually.

(2) *Local treasury.* No money shall be drawn from the treasury of any county, city or town, or other unit of local government except by authority of law.

Sec. 8. *Health care facilities.* Notwithstanding any other provisions of this Constitution, the General Assembly may enact general laws to authorize the State, counties, cities or towns, and other State and local governmental entities to issue revenue bonds to finance or refinance for any such governmental entity or any nonprofit private corporation, regardless of any church or religious relationship, the cost of acquiring, constructing, and financing health care facility projects to be operated to serve and benefit the public; provided, no cost incurred earlier than two years prior to the effective date of this section shall be refinanced. Such bonds shall be payable from the revenues, gross or net, of any such projects and any other health care facilities of any such governmental entity or nonprofit private corporation pledged therefor; shall not be secured by a pledge of the full faith and credit, or deemed to create an indebtedness requiring voter approval of any governmental entity; and may be secured by an agreement which may provide for the conveyance of title of, with or without consideration, any such project or facilities to the governmental entity or nonprofit private corporation. The power of eminent domain shall not be used pursuant hereto for nonprofit private corporations.

Sec. 9. *Capital projects for industry.* Notwithstanding any other provision of this Constitution, the General Assembly may enact general laws to authorize counties to create authorities to issue revenue bonds to finance, but not to refinance, the cost of capital projects consisting of industrial, manufacturing and pollution control facilities for industry and pollution control facilities for public utilities, and to refund such bonds.

In no event shall such revenue bonds be secured by or payable from any public moneys whatsoever, but such revenue bonds shall be secured by and payable only from revenues or property derived from private parties. All such capital projects and all transactions therefor shall be subject to taxation to the extent such projects and transactions would be subject to taxation if no public body were involved therewith; provided, however, that the General Assembly may provide that the interest on such revenue bonds shall be exempt from income taxes within the State.

The power of eminent domain shall not be exercised to provide any property for any such capital project.

Sec. 10. *Joint ownership of generation and transmission facilities.* In addition to other powers conferred upon them by law, municipalities owning or operating facilities for the generation, transmission or distribution of electric power and energy and joint agencies formed by such municipalities for the purpose of owning or operating facilities for the generation and transmission of electric power and energy (each, respectively, "a unit of municipal government") may jointly or severally own, operate and maintain works, plants and facilities, within or without the State, for the generation and transmission of electric power and energy, or both, with any person, firm, association or corporation, public or private, engaged in the generation, transmission or distribution of electric power and energy for resale (each, respectively, "a co-owner") within this State or any state contiguous to this State, and may enter into and carry out agreements with respect to such jointly owned facilities. For the purpose of financing its share of the cost of any such jointly owned electric generation or transmission facilities, a unit of municipal government may issue its revenue bonds in the manner prescribed by the General Assembly, payable as to both principal and interest solely from and secured by a lien and charge on all or any part of the revenue derived, or to be derived, by such unit of municipal government from the ownership and operation of its electric facilities; provided, however, that no unit of municipal government shall be liable, either jointly or severally, for any acts, omissions or obligations of any co-owner, nor shall any money or property of any unit of municipal government be credited or otherwise applied to the account of any co-owner or be charged with any debt, lien or mortgage as a result of any debt or obligation of any co-owner.

Sec. 11. *Capital projects for agriculture.* Notwithstanding any other provision of the Constitution the General Assembly may enact general laws to authorize the creation of an agency to issue revenue bonds to finance the cost of capital projects consisting of agricultural facilities, and to refund such bonds.

In no event shall such revenue bonds be secured by or payable from any public moneys whatsoever, but such revenue bonds shall be secured by and payable only from revenue or property derived from private parties. All such capital projects and all transactions therefor shall be subject to taxation to the extent such projects and transactions would be subject to taxation if no public body were involved therewith: provided, however, that the General Assembly may provide that the interest on such revenue bonds shall be exempt from income taxes within the State.

The power of eminent domain shall not be exercised to provide any property for any such capital project.

Sec. 12. *Higher Education Facilities.* Notwithstanding any other provisions of this Constitution, the General Assembly may enact general laws to authorize the State or any State entity to issue revenue bonds to finance and refinance the cost of acquiring, constructing, and financing higher education facilities to be operated to serve and benefit the public for any nonprofit private corporation, regardless of any church or religious relationship provided no cost incurred earlier than five years prior to the effective date of this section shall be refinanced. Such bonds shall be payable from any revenues or assets of any such nonprofit private corporation pledged therefor, shall not be secured by a pledge of the full faith and credit of the State or such State entity or deemed to create an indebtedness requiring voter approval of the State or such entity, and where the title to such facilities is vested in the State or any State entity, may be secured by an agreement which may provide for the conveyance of title to, with or without consideration, such facilities to the nonprofit private corporation. The power of eminent domain shall not be used pursuant hereto.

Sec. 13. *Seaport and airport facilities.*(1) Notwithstanding any other provisions of this Constitution, the General Assembly may enact general laws to grant to the State, counties, municipalities, and other State and local governmental entities all powers useful in connection with the development of new and existing seaports and airports, and to authorize such public bodies.

- (a) to acquire, construct, own, own jointly with public and private parties, lease as lessee, mortgage, sell, lease as lessor or otherwise dispose of lands and facilities and improvements, including undivided interest therein;
- (b) to finance and refinance for public and private parties seaport and airport facilities and improvements which relate to, develop or further waterborne or airborne commerce and cargo and passenger traffic, including commercial, industrial, manufacturing, processing, mining, transportation, distribution, storage, marine, aviation and environmental facilities and improvements; and
- (c) to secure any such financing or refinancing by all or any portion of their revenues, income or assets or other available monies associated with any of their seaport or airport facilities

and with the facilities and improvements to be financed or refinanced, and by foreclosable liens on all or any part of their properties associated with any of their seaport or airport facilities and with the facilities and improvements to be financed or refinanced, but in no event to create a debt secured by a pledge of the faith and credit of the State or any other public body in the State.

ARTICLE VI

SUFFRAGE AND ELIGIBILITY TO OFFICE

Section 1. *Who may vote.* Every person born in the United States and every person who has been naturalized, 18 years of age, and possessing the qualifications set out in this Article, shall be entitled to vote at any election by the people of the State, except as herein otherwise provided.

Sec. 2. *Qualifications of voter.*

(1) *Residence period for State elections.* Any person who has resided in the State of North Carolina for one year and in the precinct, ward, or other election district for 30 days next preceding an election, and possesses the other qualifications set out in this Article, shall be entitled to vote at any election held in this State. Removal from one precinct, ward, or other election district to another in this State shall not operate to deprive any person of the right to vote in the precinct, ward, or other election district from which that person has removed until 30 days after the removal.

(2) *Residence period for presidential elections.* The General Assembly may reduce the time of residence for persons voting in presidential elections. A person made eligible by reason of a reduction in time of residence shall possess the other qualifications set out in this Article, shall only be entitled to vote for President and Vice President of the United States or for electors for President and Vice President, and shall not thereby become eligible to hold office in this State.

(3) *Disqualification of felon.* No person adjudged guilty of a felony against this State or the United States, or adjudged guilty of a felony in another state that also would be a felony if it had been committed in this State, shall be permitted to vote unless that person shall be first restored to the rights of citizenship in the manner prescribed by law.

Sec. 3. *Registration.* Every person offering to vote shall be at the time legally registered as a voter as herein prescribed and in the manner provided by law. The General Assembly shall enact general laws governing the registration of voters.

Sec. 4. *Qualification for registration.* Every person presenting himself for registration shall be able to read and write any section of the Constitution in the English language.

Sec. 5. *Elections by people and General Assembly.* All elections by the people shall be by ballot, and all elections by the General Assembly shall be viva voce. A contested election for any office established by Article III of this Constitution shall be determined by joint ballot of both houses of the General Assembly in the manner prescribed by law.

Sec. 6. *Eligibility to elective office.* Every qualified voter in North Carolina who is 21 years of age, except as in this Constitution disqualified, shall be eligible for election by the people to office.

Sec. 7. *Oath.* Before entering upon the duties of an office, a person elected or appointed to the office shall take and subscribe the following oath:

"I,, do solemnly swear (or affirm) that I will support and maintain the Constitution and laws of the United States, and the Constitution and laws of North Carolina not inconsistent therewith, and that I will faithfully discharge the duties of my office as, so help me God."

Sec. 8. *Disqualifications for office.* The following persons shall be disqualified for office:

First, any person who shall deny the being of Almighty God.

Second, with respect to any office that is filled by election by the people, any person who is not qualified to vote in an election for that office.

Third, any person who has been adjudged guilty of treason or any other felony against this State or the United States, or any person who had been adjudged guilty of a felony in another state that also would be a felony if it had been committed in this State, or any person who has been adjudged guilty of corruption or malpractice in any office, or any person who has been removed by impeachment from any office,

and who has not been restored to the rights of citizenship in the manner prescribed by law.

Sec. 9. *Dual office holding.*

(1) *Prohibitions.* It is salutary that the responsibilities of self-government be widely shared among the citizens of the State and that the potential abuse of authority inherent in the holding of multiple offices by an individual be avoided. Therefore, no person who holds any office or place of trust or profit under the United States or any department thereof, or under any other state or government, shall be eligible to hold any office in this State that is filled by election by the people. No person shall hold concurrently any two offices in this State that are filled by election of the people. No person shall hold concurrently any two or more appointive offices or places of trust or profit, or any combination of elective and appointive offices or places of trust or profit, except as the General Assembly shall provide by general law.

(2) *Exceptions.* The provisions of this Section shall not prohibit any officer of the military forces of the State or of the United States not on active duty for an extensive period of time, any notary public, or any delegate to a Convention of the People from holding concurrently another office or place of trust or profit under this State or the United States or any department thereof.

Sec. 10. *Continuation in office.* In the absence of any contrary provision, all officers in this State, whether appointed or elected, shall hold their positions until other appointments are made or, if the offices are elective, until their successors are chosen and qualified.

ARTICLE VII

LOCAL GOVERNMENT

Section 1. *General Assembly to provide for local government.* The General Assembly shall provide for the organization and government and the fixing of boundaries of counties, cities and towns, and other governmental subdivisions, and, except as otherwise prohibited by this Constitution, may give such powers and duties to counties, cities and towns, and other governmental subdivisions as it may deem advisable.

The General Assembly shall not incorporate as a city or town, nor shall it authorize to be incorporated as a city or town, any territory lying within one mile of the corporate limits of any other city or town

having a population of 5,000 or more according to the most recent decennial census of population taken by order of Congress, or lying within three miles of the corporate limits of any other city or town having a population of 10,000 or more according to the most recent decennial census of population taken by order of Congress, or lying within four miles of the corporate limits of any other city or town having a population of 25,000 or more according to the most recent decennial census of population taken by order of Congress, or lying within five miles of the corporate limits of any other city or town having a population of 50,000 or more according to the most recent decennial census of population taken by order of Congress. Notwithstanding the foregoing limitations, the General Assembly may incorporate a city or town by an act adopted by vote of three-fifths of all the members of each house.

Sec. 2. *Sheriffs.* In each county a Sheriff shall be elected by the qualified voters thereof at the same time and places as members of the General Assembly are elected and shall hold his office for a period of four years, subject to removal for cause as provided by law.

Sec. 3. *Merged or consolidated counties.* Any unit of local government formed by the merger or consolidation of a county or counties and the cities and towns therein shall be deemed both a county and a city for the purposes of this Constitution, and may exercise any authority conferred by law on counties, or on cities and towns, or both, as the General Assembly may provide.

ARTICLE VIII

CORPORATIONS

Section 1. *Corporate charters.* No corporation shall be created, nor shall its charter be extended, altered, or amended by special act, except corporations for charitable, educational, penal, or reformatory purposes that are to be and remain under the patronage and control of the State; but the General Assembly shall provide by general laws for the chartering, organization, and powers of all corporations, and for the amending, extending, and forfeiture of all charters, except those above permitted by special act. All such general acts may be altered from time to time or repealed. The General Assembly may at any time by special act repeal the charter of any corporation.

Sec. 2. *Corporations defined.* The term "corporation" as used in this Section shall be construed to include all associations and joint-stock companies having any of the powers and privileges of

corporations not possessed by individuals or partnerships. All corporations shall have the right to sue and shall be subject to be sued in all courts, in like cases as natural persons.

ARTICLE IX

EDUCATION

Section 1. *Education encouraged.* Religion, morality, and knowledge being necessary to good government and the happiness of mankind, schools, libraries, and the means of education shall forever be encouraged.

Sec. 2. *Uniform system of schools.*

(1) *General and uniform system; term.* The General Assembly shall provide by taxation and otherwise for a general and uniform system of free public schools, which shall be maintained at least nine months in every year, and wherein equal opportunities shall be provided for all students.

(2) *Local responsibility.* The General Assembly may assign to units of local government such responsibility for the financial support of the free public schools as it may deem appropriate. The governing boards of units of local government with financial responsibility for public education may use local revenues to add to or supplement any public school or post-secondary school program.

Sec. 3. *School attendance.* The General Assembly shall provide that every child of appropriate age and of sufficient mental and physical ability shall attend the public schools, unless educated by other means.

Sec. 4. *State Board of Education.*

(1) *Board.* The State Board of Education shall consist of the Lieutenant Governor, the Treasurer, and eleven members appointed by the Governor, subject to confirmation by the General Assembly in joint session. The General Assembly shall divide the State into eight educational districts. Of the appointive members of the Board, one shall be appointed from each of the eight educational districts and three shall be appointed from the State at large. Appointments shall be for overlapping terms of eight years. Appointments to fill vacancies shall be made by the Governor for the unexpired terms and shall not be subject to confirmation.

(2) *Superintendent of Public Instruction.* The Superintendent of Public Instruction shall be the secretary and chief administrative officer of the State Board of Education.

Sec. 5. *Powers and duties of Board.* The State Board of Education shall supervise and administer the free public school system and the educational funds provided for its support, except the funds mentioned in Section 7 of this Article, and shall make all needed rules and regulations in relation thereto, subject to laws enacted by the General Assembly.

Sec. 6. *State school fund.* The proceeds of all lands that have been or hereafter may be granted by the United States to this State, and not otherwise appropriated by this State or the United States; all moneys, stocks, bonds, and other property belonging to the State for purposes of public education; the net proceeds of all sales of the swamp lands belonging to the State; and all other grants, gifts, and devises that have been or hereafter may be made to the State, and not otherwise appropriated by the State or by the terms of the grant, gift, or devise, shall be paid into the State Treasury and, together with so much of the revenue of the State as may be set apart for that purpose, shall be faithfully appropriated and used exclusively for establishing and maintaining a uniform system of free public schools.

Sec. 7. *County school fund.* All moneys, stocks, bonds, and other property belonging to a county school fund, and the clear proceeds of all penalties and forfeitures and of all fines collected in the several counties for any breach of the penal laws of the State, shall belong to and remain in the several counties, and shall be faithfully appropriated and used exclusively for maintaining free public schools.

Sec. 8. *Higher education.* The General Assembly shall maintain a public system of higher education, comprising The University of North Carolina and such other institutions of higher education as the General Assembly may deem wise. The General Assembly shall provide for the selection of trustees of The University of North Carolina and of the other institutions of higher education, in whom shall be vested all the privileges, rights, franchises, and endowments heretofore granted to or conferred upon the trustees of these institutions. The General Assembly may enact laws necessary and expedient for the maintenance and management of The University of North Carolina and the other public institutions of higher education.

Sec. 9. *Benefits of public institutions of higher education.* The General Assembly shall provide that the benefits of The University of North Carolina and other public institutions of higher education, as far as practicable, be extended to the people of the State free of expense.

Sec. 10. *Escheats.*

(1) *Escheats prior to July 1, 1971.* All property that prior to July 1, 1971, accrued to the State from escheats, unclaimed dividends, or distributive shares of the estates of deceased persons shall be appropriated to the use of The University of North Carolina.

(2) *Escheats after June 30, 1971.* All property that, after June 30, 1971, shall accrue to the State from escheats, unclaimed dividends, or distributive shares of the estates of deceased persons shall be used to aid worthy and needy students who are residents of this State and are enrolled in public institutions of higher education in this State. The method, amount, and type of distribution shall be prescribed by law.

ARTICLE X

HOMESTEADS AND EXEMPTIONS

Section 1. *Personal property exemptions.* The personal property of any resident of this State, to a value fixed by the General Assembly but not less than \$500, to be selected by the resident, is exempted from sale under execution or other final process of any court, issued for the collection of any debt.

Sec. 2. *Homestead exemptions.*

(1) *Exemption from sale; exceptions.* Every homestead and the dwellings and buildings used therewith, to a value fixed by the General Assembly but not less than \$1,000, to be selected by the owner thereof, or in lieu thereof, at the option of the owner, any lot in a city or town with the dwellings and buildings used thereon, and to the same value, owned and occupied by a resident of the State, shall be exempt from sale under execution or other final process obtained on any debt. But no property shall be exempt from sale for taxes, or for payment of obligations contracted for its purchase.

(2) *Exemption for benefit of children.* The homestead, after the death of the owner thereof, shall be exempt from the payment of any debt during the minority of the owner's children, or any of them.

(3) *Exemption for benefit of surviving spouse.* If the owner of a homestead dies, leaving a surviving spouse but no minor children, the homestead shall be exempt from the debts of the owner, and the rents and profits thereof shall inure to the benefit of the surviving spouse until he or she remarries, unless the surviving spouse is the owner of a separate homestead.

(4) *Conveyance of homestead.* Nothing contained in this Article shall operate to prevent the owner of a homestead from disposing of it by deed, but no deed made by a married owner of a homestead shall be valid without the signature and acknowledgement of his or her spouse.

Sec. 3. *Mechanics' and laborers' liens.* The General Assembly shall provide by proper legislation for giving to mechanics and laborers an adequate lien on the subject-matter of their labor. The provisions of Sections 1 and 2 of this Article shall not be so construed as to prevent a laborer's lien for work done and performed for the person claiming the exemption or a mechanics's lien for work done on the premises.

Sec. 4. *Property of married women secured to them.* The real and personal property of any female in this State acquired before marriage, and all property real and personal, to which she may, after marriage, become in any manner entitled, shall be and remain the sole and separate estate and property of such female, and shall not be liable for any debts, obligations, or engagements of her husband, and may be devised and bequeathed and conveyed by her, subject to such regulations and limitations as the General Assembly may prescribe. Every married woman may exercise powers of attorney conferred upon her by her husband, including the power to execute and acknowledge deeds to property owned by herself and her husband or by her husband.

Sec. 5. *Insurance.* A person may insure his or her own life for the sole use and benefit of his or her spouse or children or both, and upon his or her death the proceeds from the insurance shall be paid to or for the benefit of the spouse or children or both, or to a guardian, free from all claims of the representatives or creditors of the insured or his or her estate. Any insurance policy which insures the life of a person for the sole use and benefit of that person's spouse or children or both shall not be subject to the claims of creditors of the insured during his or her lifetime, whether or not the policy reserves to the insured during his or her lifetime any or all rights provided for by the

policy and whether or not the policy proceeds are payable to the estate of the insured in the event the beneficiary or beneficiaries predecease the insured.

ARTICLE XI

PUNISHMENTS, CORRECTIONS, AND CHARITIES

Section 1. *Punishments.* The following punishments only shall be known to the laws of this State: death, imprisonment, fines, removal from office, and disqualification to hold and enjoy any office of honor, trust, or profit under this State.

Sec. 2. *Death punishment.* The object of punishments being not only to satisfy justice, but also to reform the offender and thus prevent crime, murder, arson, burglary, and rape, and these only, may be punishable with death, if the General Assembly shall so enact.

Sec. 3. *Charitable and correctional institutions and agencies.* Such charitable, benevolent, penal, and correctional institutions and agencies as the needs of humanity and the public good may require shall be established and operated by the State under such organization and in such manner as the General Assembly may prescribe.

Sec. 4. *Welfare policy; board of public welfare.* Beneficent provision for the poor, the unfortunate, and the orphan is one of the first duties of a civilized and a Christian state. Therefore the General Assembly shall provide for and define the duties of a board of public welfare.

ARTICLE XII

MILITARY FORCES

Section 1. *Governor is Commander in Chief.* The Governor shall be Commander in Chief of the military forces of the State and may call out those forces to execute the law, suppress riots and insurrections, and repel invasion.

ARTICLE XIII

CONVENTIONS; CONSTITUTIONAL AMENDMENT AND REVISION

Section 1. *Convention of the People.* No Convention of the People of this State shall ever be called unless by the concurrence of two-

thirds of all the members of each house of the General Assembly, and unless the proposition "Convention or No Convention" is first submitted to the qualified voters of the State at the time and in the manner prescribed by the General Assembly. If a majority of the votes cast upon the proposition are in favor of a Convention, it shall assemble on the day prescribed by the General Assembly. The General Assembly shall, in the act of submitting the convention proposition, propose limitations upon the authority of the Convention; and if a majority of the votes cast upon the proposition are in favor of a Convention, those limitations shall become binding upon the Convention. Delegates to the Convention shall be elected by the qualified voters at the time and in the manner prescribed in the act of submission. The Convention shall consist of a number of delegates equal to the membership of the House of Representatives of the General Assembly that submits the convention proposition and the delegates shall be apportioned as is the House of Representatives. A Convention shall adopt no ordinance not necessary to the purpose for which the Convention has been called.

Sec. 2. *Power to revise or amend Constitution reserved to people.* The people of this State reserve the power to amend this Constitution and to adopt a new or revised Constitution. This power may be exercised by either of the methods set out hereinafter in this Article, but in no other way.

Sec. 3. *Revision or amendment by Convention of the People.* A Convention of the People of this State may be called pursuant to Section 1 of this Article to propose a new or revised Constitution or to propose amendments to this Constitution. Every new or revised Constitution and every constitutional amendment adopted by a Convention shall be submitted to the qualified voters of the State at the time and in the manner prescribed by the Convention. If a majority of the votes cast thereon are in favor of ratification of the new or revised Constitution or the constitutional amendment or amendments, it or they shall become effective January first next after ratification by the qualified voters unless a different effective date is prescribed by the Convention.

Sec. 4. *Revision or amendment by legislative initiation.* A proposal of a new or revised Constitution or an amendment or amendments to this Constitution may be initiated by the General Assembly, but only if three-fifths of all the members of each house shall adopt an act submitting the proposal to the qualified voters of the State for their ratification or rejection. The proposal shall be submitted at the time and in the manner prescribed by the General Assembly. If a majority

of the votes cast thereon are in favor of the proposed new or revised Constitution or constitutional amendment or amendments, it or they shall become effective January first next after ratification by the voters unless a different effective date is prescribed in the act submitting the proposal or proposals to the qualified voters.

ARTICLE XIV

MISCELLANEOUS

Section 1. *Seat of government.* The permanent seat of government of this State shall be at the City of Raleigh.

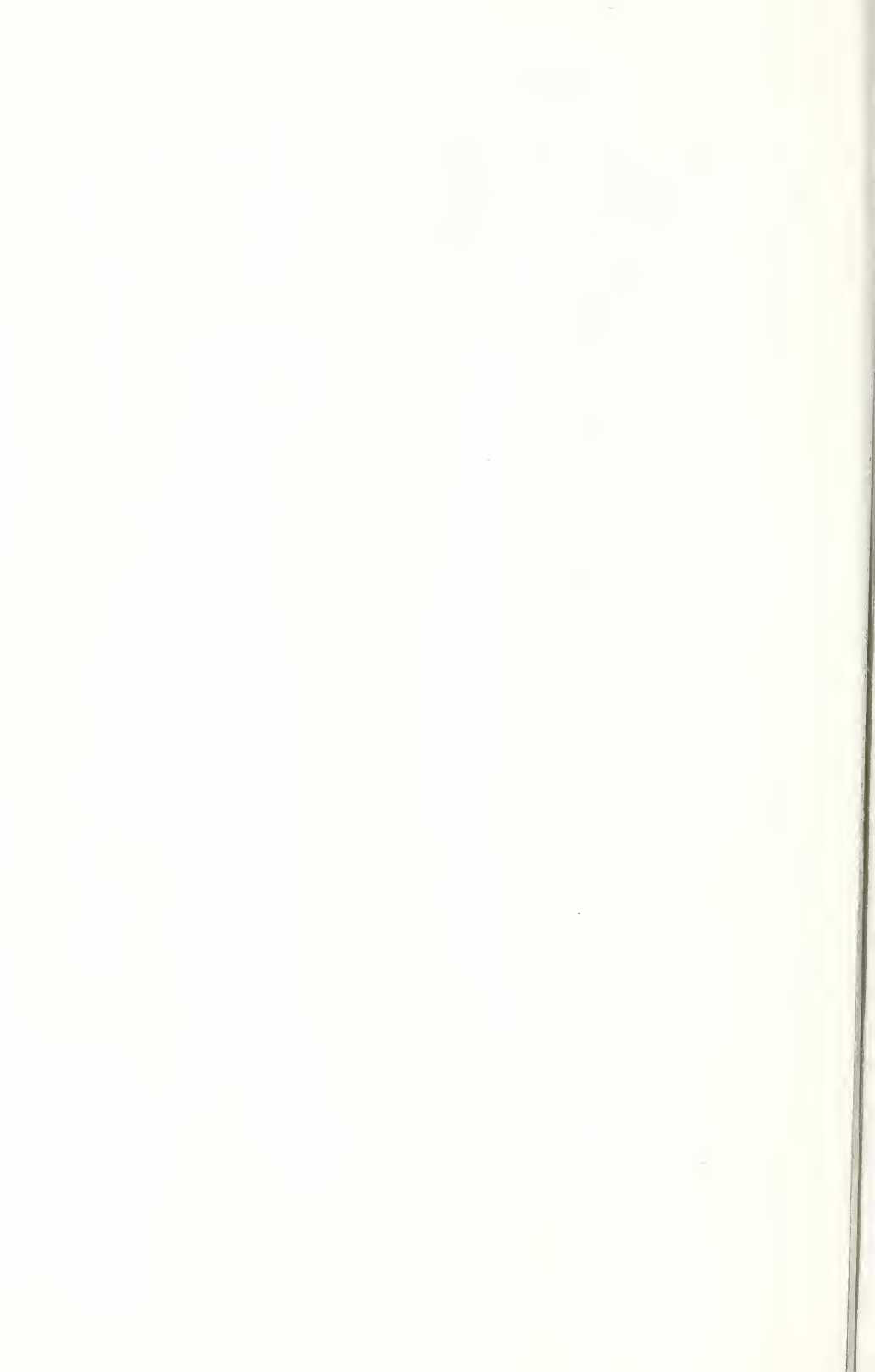
Sec. 2. *State boundaries.* The limits and boundaries of the State shall be and remain as they now are.

Sec. 3. *General laws defined.* Whenever the General Assembly is directed or authorized by this Constitution to enact general laws, or general laws uniformly applicable throughout the State, or general laws uniformly applicable in every county, city and town, and other unit of local government, or in every local court district, no special or local act shall be enacted concerning the subject matter directed or authorized to be accomplished by general or uniformly applicable laws, and every amendment or repeal of any law relating to such subject matter shall also be general and uniform in its effect throughout the State. General laws may be enacted for classes defined by population or other criteria. General laws uniformly applicable throughout the State shall be made applicable without classification or exception in every unit of local government of like kind, such as every county, or every city and town, but need not be made applicable in every unit of local government in the State. General laws uniformly applicable in every county, city and town, and other unit of local government, or in every local court district, shall be made applicable without classification or exception in every unit of local government, or in every local court district, as the case may be. The General Assembly may at any time repeal any special, local, or private act.

Sec. 4. *Continuity of laws; protection of office holders.* The laws of North Carolina not in conflict with this Constitution shall continue in force until lawfully altered. Except as otherwise specifically provided, the adoption of this Constitution shall not have the effect of vacating any office or term of office now filled or held by virtue of any election or appointment made under the prior Constitution of North Carolina and the laws of the State enacted pursuant thereto.

Sec. 5. *Conservation of natural resources.* It shall be the policy of this State to conserve and protect its land and waters for the benefit of all its citizenry, and to this end it shall be a proper function of the State of North Carolina and its political subdivisions to acquire and preserve park, recreational, and scenic areas, to control and limit the pollution of our air and water, to control excessive noise, and in every other appropriate way to preserve as a part of the common heritage of this State its forests, wetlands, estuaries, beaches, historical sites, openlands, and places of beauty.

To accomplish the aforementioned public purposes, the State and its counties, cities and towns, and other units of local government may acquire by purchase or gift properties or interests in properties which shall, upon their special dedication to and acceptance by resolution adopted by a vote of three-fifths of the members of each house of the General Assembly for those public purposes, constitute part of the "State Nature and Historic Preserve", and which shall not be used for other purposes except as authorized by law enacted by a vote of three-fifths of the members of each house of the General Assembly. The General Assembly shall prescribe by general law the conditions and procedures under which such properties or interests therein shall be dedicated for the aforementioned public purposes.



**SESSION LAWS
OF THE
STATE OF NORTH CAROLINA**

FIRST SESSION 1987

H.B. 18

CHAPTER 1

**AN ACT TO APPOINT MEMBERS OF THE WHITEVILLE CITY
BOARD OF EDUCATION.**

The General Assembly of North Carolina enacts:

Section 1. Notwithstanding Section 9 of Chapter 172, Session Laws of 1977, appointment of the members of the Board of Education of the Whiteville City School Administrative Unit in 1987 need not be made at least 10 days prior to taking office.

Sec. 2. Pursuant to Chapter 172, Session Laws of 1977, the following persons are appointed to the Board of Education for the Whiteville City School Administrative Unit, and they shall serve for a term of two years beginning on the third Tuesday in February of 1987: David Flowers, Charles L. Lennon, Katie Powell, and Lana S. White.

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 12th day of February, 1987.

H.B. 3

CHAPTER 2

**AN ACT TO GRANT GENERAL LAW POWER OF EMINENT
DOMAIN TO COUNTY WATER AND SEWER DISTRICTS.**

Whereas, the 1977 General Assembly authorized county water and sewer districts to condemn property by the same method as the Department of Transportation; and

Whereas, the 1981 General Assembly rewrote the eminent domain law but neglected to provide any condemnation powers for county water and sewer districts; and

Whereas, Chapter 735, Session Laws of 1983, granted condemnation powers to county water and sewer districts under the pre- 1981 law, but placed a June 30, 1985, sunset on that act, pending an examination of the question; Now, therefore,

The General Assembly of North Carolina enacts:

Section 1. G.S. 40A-3(c) is amended by adding a new subdivision to read:

"(12) A district established under the provisions of Article 6 of Chapter 162A for the purposes of that Article."

Sec. 2. G.S. 162A-89.1 is rewritten to read:

"§ 162A-89.1. *Eminent domain power authorized.*--A county water and sewer district shall have the power of eminent domain, to be exercised in accordance with the provisions of Chapter 40A of the General Statutes, over the acquisition of any improved or unimproved lands or rights in land, within or without the district."

Sec. 3. Section 2 of this act does not affect any action commenced before July 1, 1985.

Sec. 4. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 19th day of February, 1987.

S.B. 111

CHAPTER 3

AN ACT TO CREATE AN EMERGENCY PRISON FACILITIES DEVELOPMENT PROGRAM AND AN EMERGENCY PRISON FACILITIES FUND TO PAY FOR THE SAME.

Whereas, the State of North Carolina is currently involved in litigation related to the conditions of confinement within its prison system; and

Whereas, it is the intent of the State to operate a prison system that complies with State and federal law while continuing to protect the people of the State from those who refuse to obey the rules of society; and

Whereas, to expedite prison construction it is desirable to create an Emergency Prison Facilities Fund to pay for the same; and

Whereas, it is also important to expedite the renovation of certain prison facilities; Now, therefore,

The General Assembly of North Carolina enacts:

Section 1. *Creation of Emergency Prison Facilities Development Program.* There is created within the Office of State Budget and Management an Emergency Prison Facilities Development Program to carry out the prison construction provided for in this act. The program shall be administered by the Office of State Budget and Management with the assistance of outside professional consultants.

Sec. 2. *Creation of Emergency Prison Facilities Fund.* There is created in the Office of State Budget and Management an Emergency Prison Facilities Fund.

Sec. 3. *Monies in the Emergency Prison Facilities Fund.*

(1) Funds in the amount of twelve million nine hundred seventy-seven thousand six hundred dollars (\$12,977,600) appropriated to the Department of Correction in Section 4 of Chapter 1014 of the 1985 Session Laws (Regular Session 1986) and allocated by Sections 210, 211, 212, 213, and 216 of that act are transferred to the Emergency Prison Facilities Fund.

(2) Funds in the amount of one million two hundred sixty-six thousand dollars (\$1,266,000) appropriated to a Reserve for Prison Needs in Section 2 of Chapter 1014 of the 1985 Session Laws (Regular Session 1986) are transferred to the Emergency Prison Facilities Fund.

(3) Funds appropriated to the Department of Correction in Section 4 of Chapter 1014 of the 1985 Session Laws (Regular Session 1986) and allocated by Section 215 of that act that have not been spent by the effective date of this act are transferred to the Emergency Prison Facilities Fund.

(4) Funds appropriated to the Department of Correction in Chapter 480 of the 1985 Session Laws that may be reallocated pursuant to Section 214 of Chapter 1014 of the 1985 Session Laws (Regular Session 1986) that have not been spent by the effective date of this act are transferred to the Emergency Prison Facilities Fund.

(5) There is appropriated from the General Fund to the Office of State Budget and Management, Emergency Prison Facilities Fund, the sum of fifteen million one hundred twenty-five thousand six hundred ninety dollars (\$15,125,690) for the 1986-87 fiscal year.

Sec. 4. *Uses of monies in the Emergency Prison Facilities Fund.* Monies in the Emergency Prison Facilities Fund shall be used as follows:

(1) To construct a 100-bed medium custody dormitory at the Caswell Prison Unit.

(2) To construct a 100-bed medium custody dormitory at the Randolph Prison Unit.

(3) To construct two additional 100-bed dormitories for female inmates at the North Carolina Correctional Facility for Women. Minimum custody inmates participating in work-release, study-release, and other external programs in Wake County shall be housed in a 100-bed facility similar to the Wake Advancement Center to be constructed outside the fenced perimeter of the North Carolina Correctional Facility for Women. The remaining 100-bed dormitory to be constructed shall be designed to separate the various custody levels at the North Carolina Correctional Center for Women to the fullest extent possible.

(4) To purchase land and to construct a 300-bed medium custody facility in Buncombe County to replace Craggy Prison.

(5) To construct a 100-bed medium custody dormitory in Hoke County.

(6) To purchase land and construct a 100-bed unit in Buncombe County similar to the Wake Advancement Center to serve inmates participating in work-release, study-release, and other community programs. If land is available at the new Craggy Prison site, the Advancement Center may be constructed at that location.

(7) To construct support facilities at the sites authorized in subdivisions (1) through (6) of this section.

(8) To construct 32, 50-bed minimum custody, inmate housing units with support facilities on State property adjacent to or within the following existing prison facilities:

| <u>Facility</u> | <u>Housing Units</u> |
|------------------|----------------------|
| Caldwell | 2 |
| Rutherford | 2 |
| Mecklenburg I | 2 |
| Rowan | 1 |
| Durham | 2 |
| Wake Advancement | 4 |
| Carteret | 2 |
| Forsyth | 2 |
| Davidson | 2 |
| Guilford | 1 |

| | |
|-------------|-----------|
| Robeson | 2 |
| New Hanover | 1 |
| Orange | 3 |
| Sanford | 2 |
| Caledonia | 4 |
| | <u>32</u> |

If, in the preparation for construction, conditions are discovered at any of the foregoing sites making them unsuitable for construction, such housing units and related support facilities may be constructed on State property adjacent to or within the State prison facilities in Wilkes County or Rutherford County.

(9) To improve physical support systems at prison field units throughout the State.

(10) To make renovations and improvements similar to those made in dormitories in prison units in the South Piedmont Area, at the remaining 52 field units in the Department of Correction.

(11) To contract for outside professional assistance in administering the Emergency Prison Facilities Program. No more than five hundred thousand dollars (\$500,000) may be spent for this purpose.

Contracts shall be entered into in such manner so that all projects listed in subdivisions (1) through (8) and (11) of this section shall be accomplished within the sum of twenty nine million three hundred sixty nine thousand two hundred ninety dollars (\$29,369,290).

Sec. 5. *Authority to facilitate construction of projects funded from the Emergency Prison Facilities Fund.* (a) The Office of State Budget and Management may contract for and supervise all aspects of design, construction, or demolition of prison facilities designated in subdivisions (1) through (9) of Section 4 of this act without being subject to the requirements of the following statutes and rules implementing those statutes: G.S. 129-42(1), 129-42.2, 143-128, 143-129, 143-132, 143-134, 143-131, 143-64.10 through 143-64.13, 113A-1 through 113A-10, 113A-50 through 113A-66, 133-1.1(b), and 133-1.1(g). All contracts for the design, construction, or demolition of these facilities shall include a penalty for failure to complete the work by a specified date.

Construction of the dormitories set out in subdivisions (1), (2), (4), and (5) of Section 4 of this act shall be based on the existing design used for the new 100-man dormitories built in the South Piedmont Area of the Division of Prisons to comply with the consent judgment in the case of HUBERT v. WARD, allowing for site adaptations and other necessary modifications.

This subsection expires upon completion of the capital projects designated in subdivisions (1) through (9) of Section 4 of this act.

(b) The Office of State Budget and Management may contract for the renovation of the 52 prison units not part of the South Piedmont Area of the Department of Correction, as designated in subdivision (10) of Section 4 of this act, without being subject to the requirements of the following statutes and rules implementing those statutes: G.S. 129-42(1), 129-42.2, 143-128, 143-129, 143-132, 143-134, and 143-131. All contracts for the renovation of these facilities shall include a penalty for failure to complete the work by a specified date.

This subsection expires upon completion of the renovation of the units designated in subdivision (10) of subsection 4 of this act.

Sec. 6. *Reporting requirements.* The Office of State Budget and Management shall report to the cochairmen of the Prison Construction Subcommittee of the Joint Legislative Commission on Government Operations at least once a month on the Emergency Prison Facilities Development Program. The report shall include information on which contractors have been selected, what contracts have been entered into, the projected and actual occupancy dates of facilities contracted for, the number of prison beds to be constructed on each project, the location of each project, and the projected and actual cost of each project.

Sec. 7. *Appropriation for Personnel.* There is appropriated from the General Fund to the Department of Correction the sum of two hundred forty thousand one hundred one dollars (\$240,101) for the 1986-87 fiscal year to fund positions for seven pre-parole investigators, seven probation/parole officers, and five two-person intensive teams to handle the increase in emergency paroles mandated by G.S. 148-4.1.

Positions funded by this section shall be abolished July 1, 1988.

Sec. 8. The General Assembly finds that revenues to date for the 1986-87 fiscal year have exceeded estimates approved by the 1986 Session of the 1985 General Assembly and that the anticipated revenues for the 1986-87 fiscal year are adequate to support the appropriations made from the General Fund in this act.

Sec. 9. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 6th day of March, 1987.

S.B. 10

CHAPTER 4

AN ACT TO REPEAL THE REVERSION OF WILLIE M. FUNDS.

The General Assembly of North Carolina enacts:

Section 1. Effective June 30, 1986, Section 137 of Chapter 1014, Session Laws of 1985 is repealed.

Sec. 2. Effective July 1, 1985, Section 85(h) of Chapter 479, Session Laws of 1985, reads as rewritten:

"(h) The General Assembly supports the efforts of the responsible officials and agencies of the State to meet the requirements of the court order in Willie M., et. al. vs. Hunt, et. al. However, in view of the fundings in subsection (g) above, the General Assembly expressly directs that no State funds shall be expended on the placement and services of class members in Willie M., et. al., or for any other thing or purpose arising out of this litigation, now or at any time in the biennium, except for those funds appropriated in Section 2 of this act to the Departments of Human Resources and Public Education for programs serving members of the Willie M. Class identified in Willie M., et. al. vs. Hunt, et. al., and except for such funds as may be elsewhere appropriated by the General Assembly specifically for such purposes. The above limitation shall not preclude the use of unexpended Willie M. funds from prior fiscal years to cover current or future needs of the Willie M. program subject to approval by the Director of the Budget. Such expenditures shall not be subject to the requirements of Sections 158 and 161 of this act."

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 9th day of March, 1987.

S.B. 42

CHAPTER 5

AN ACT TO PERMIT ABC BOARDS IN CLEVELAND COUNTY TO CONTRACT FOR LAW ENFORCEMENT.

The General Assembly of North Carolina enacts:

Section 1. Notwithstanding the provisions of Section 12 of Chapter 832 of the 1969 Session Laws, any local ABC Board in Cleveland County may, instead of hiring local ABC officers, contract to pay its enforcement funds to a sheriff's department, city police department, or other local law enforcement agency for enforcement of the ABC laws. The department or agency contracting for said services

shall designate one of its officers as an alcohol control officer, and said designated officer shall have the same authority to inspect under G.S. 18B-502 that an ABC officer employed by the local board would have and shall have county-wide jurisdiction.

Sec. 2. All laws and clauses of laws in conflict with this act are repealed.

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 9th day of March, 1987.

S.B. 104

CHAPTER 6

AN ACT TO ALLOCATE ADDITIONAL FEDERAL SOCIAL SERVICES BLOCK GRANT FUNDS.

The General Assembly of North Carolina enacts:

Section 1. Effective June 30, 1986, Section 5(c) of Chapter 1014 of the 1985 Session Laws, Regular Session 1986 reads as rewritten:

"(c) Increases in Federal Fund Availability. If the United States Congress appropriates additional funds for the Social Services Block Grant after the effective date of this act, two million two hundred fifty thousand eight hundred eighty-three dollars (\$2,250,883) shall be allocated to the Division of Social Services, Department of Human Resources, for disbursement to county departments of social services for the 1986-87 fiscal year pursuant to the formula set out in 10 NCAC 43L .0401.2(a) and (b); the balance of these funds shall be held in a reserve in the Social Services Block Grant for future allocations by the General Assembly.

If the United States Congress appropriates additional funds for other block grants after the effective date of this act, these funds shall be held in a reserve in each block grant for future allocations by the General Assembly. This subsection shall not apply to the Community Development Block Grant, the Community Services Block Grant, and to Job Partnership Act funds."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 9th day of March, 1987.

H.B. 48

CHAPTER 7

AN ACT TO PROVIDE FOR THE STABILIZATION OF THE PRISON POPULATION.

Whereas, it is the intent of the General Assembly to operate a prison system that complies with all provisions of the State and federal constitutions and to continue to protect the people of the State from those who refuse to obey the rules of society; and

Whereas, during the past few years the federal courts have intervened in the operation of many state prison systems; and

Whereas, there are now 13 state prison systems that are entirely under supervision of the federal courts, and there are 26 states that have one or more facilities under court order; and

Whereas, when federal intervention occurs, the federal government normally places a cap on the prison population; and

Whereas, North Carolina is presently under federal intervention in the South Piedmont Area of the Department of Correction, and a cap on the prison population in that area has been imposed by the court; and

Whereas, the State is litigating a lawsuit similar to the lawsuit in the South Piedmont Area of the Department of Correction that encompasses the remaining prison field units throughout the State; and

Whereas, in 1985 and 1986 the General Assembly appropriated funds to make improvements in the South Piedmont Area of the Department of Correction and throughout the system and will continue to make progress in addressing any problems existing in our system; and

Whereas, the Attorney General has advised that the State prison population must be stabilized while improvements are being made in the system, the Governor, the Lieutenant Governor, the Speaker of the House of Representatives, and the Attorney General concur in the necessity of the recommendation of the Special Committee on Prisons to establish a temporary maximum inmate population and a mechanism for not exceeding that maximum; Now, therefore,

The General Assembly of North Carolina enacts:

Section 1. G.S. 148-4.1 is amended by adding the following subsections to read:

"(d) If the number of prisoners serving a sentence in the State prison system or otherwise housed in the State prison system exceeds ninety-seven percent (97%) of 18,000 for 15 consecutive days, the Secretary of Correction shall notify the Governor and the Chairman of the Parole Commission of this fact. Upon receipt of this notification, the Parole Commission shall within 60 days release on parole a number of inmates sufficient to reduce the number of prisoners serving a sentence in the State prison system or otherwise housed in

the State prison system to ninety-six percent (96%) of 18,000.

From the date of the notification until the number of prisoners serving a sentence in the State prison system or otherwise housed in the State prison system has been reduced to ninety-six percent (96%) of 18,000, the Secretary may not accept any inmates ordered transferred from local confinement facilities to the State prison system under G.S. 148-32.1(b). Further, the Secretary may return any inmate housed in the State prison system under an order entered pursuant to G.S. 148-32.1(b) to the local confinement facility from which the inmate was transferred.

(e) In addition to those persons otherwise eligible for parole, from the date of notification in subsection (d) until the number of prisoners serving a sentence in the State prison system or otherwise housed in the State prison system has been reduced to ninety-six percent (96%) of 18,000, any person imprisoned only for a misdemeanor also shall be eligible for parole notwithstanding any other provision of law, except those persons convicted of a misdemeanor for which assault is one of the elements necessary to establish the offense of which the person was convicted."

Sec. 2. G.S. 148-32.1(b) is amended by adding the following language at the end of the first sentence immediately before the period:

"or within another judicial district where space is available, which local facility shall accept the transferred prisoner, if the prison population has exceeded the limits established in G.S. 148-4.1(d)".

Sec. 3. G.S. 148-4.1(b) is rewritten to read:

"(b) Except as provided in subsection (c) and (e), only inmates who are otherwise eligible for parole pursuant to Article 85 of Chapter 15A or pursuant to Article 3B of this Chapter may be released under this section."

Sec. 4. G.S. 148-4.1(c) is rewritten to read:

"(c) Persons eligible for parole under Article 85A of Chapter 15A shall be eligible for early parole under this section six nine months prior to the discharge date otherwise applicable, and ~~three~~ six months prior to the date of automatic 90-day parole authorized by G.S. 15A-1380.2; ~~provided, however, when the Secretary of Correction certifies that in his opinion a person eligible for parole under Article 85A of Chapter 15A poses no threat to society, that person shall be eligible for early parole under this section nine months prior to the discharge date~~

~~otherwise applicable, and six months prior to the date of automatic 90-day parole authorized by G.S. 15A-1380.2."~~

Sec. 5. G.S. 15A-1380.2(c) is rewritten to read:

"(c) The term of parole for a prisoner paroled under this section shall be 90 days. In the case of an inmate eligible for parole under G.S. 148-4.1 who has less than ~~180~~ 270 days remaining on the maximum sentence, the Parole Commission may simultaneously parole and terminate supervision of the prisoner when the Commission finds that such action will not be incompatible with the public interest. ~~In the case of an inmate eligible for parole under G.S. 148-4.1 who has 180 to 270 days remaining on the maximum sentence, the Parole Commission may simultaneously parole and terminate supervision of the prisoner when the Secretary of Correction certifies that in his opinion the prisoner poses no threat to society and when the Commission finds that such action will not be incompatible with the public interest."~~

Sec. 6. Sections 1, 2, and 3 of this act shall expire July 1, 1989, unless reenacted by the General Assembly. The Joint Legislative Commission on Governmental Operations, or other Committee designated by the Speaker of the House of Representatives and the Lieutenant Governor, shall monitor the implementation of this act. The Secretary of Correction and the Chairman of the Parole Commission shall make a written report to the Governor, the Joint Legislative Commission on Governmental Operations, the Fiscal Research Division, and the Special Committee on Prisons at least one month prior to the 1989 Session of the General Assembly.

Sec. 7. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 11th day of March, 1987.

H.B. 51

CHAPTER 8

AN ACT TO EXPAND THE ALEXANDER COUNTY BOARD OF COMMISSIONERS FROM THREE TO FIVE MEMBERS.

The General Assembly of North Carolina enacts:

Section 1. Section 2 of Chapter 228, Public-Local Laws of 1939 is amended by adding the following at the end: "Effective on the first Monday of December 1988, the Board of County Commissioners of Alexander County is expanded from three members to five members. The two additional members provided by this act shall be elected in 1988 and quadrennially thereafter for four-year terms."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 12th day of March, 1987.

H.B. 64**CHAPTER 9**

AN ACT TO VALIDATE A CONVEYANCE BY TYRRELL COUNTY TO THE TYRRELL COUNTY RURAL HEALTH ASSOCIATION, INC.

The General Assembly of North Carolina enacts:

Section 1. Notwithstanding G.S. 153A-176 and Article 12 of Chapter 160A of the General Statutes, the conveyance by Tyrrell County by private sale to the Tyrrell County Rural Health Association, Inc. of property located on the corner of Broad and Martha Streets, formerly known as the Tyrrell County Hospital, Inc. is validated.

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 12th day of March, 1987.

H.B. 82**CHAPTER 10**

AN ACT TO ALLOW THE TOWN OF NAVASSA TO ENGAGE IN COMMUNITY DEVELOPMENT ACTIVITIES WITH FEDERAL FUNDS WITHIN BRUNSWICK COUNTY.

The General Assembly of North Carolina enacts:

Section 1. Notwithstanding G.S. 160A-360(a) the Town of Navassa may use federal funds to engage in any activity authorized by G.S. 160A-456, G.S. 160A-457, or G.S. 160A-457.1 within any part of Brunswick County which is within ten miles of the corporate limits.

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 12th day of March, 1987.

S.B. 9**CHAPTER 11**

AN ACT TO AMEND THE ALARM SYSTEMS LICENSING ACT TO PROVIDE FOR AN ADDITIONAL EXEMPTION FROM THE COVERAGE OF THE ACT FOR SOME PERSONS OR COMPANIES PROVIDING SERVICES TO THE STATE OR LOCAL GOVERNMENTS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 74D-3 is amended by adding a new subdivision to read:

"(5) A person or business providing alarm systems services to a State agency or local government if that person or business has been providing those services to the State agency or local government for more than five years prior to the effective date of this act, and the State agency or local government joins with the person or business in requesting the application of this exemption."

Sec. 2. G.S. 74D-3(3) is amended by deleting the word "and"; G.S. 74D-3(4) is amended by adding the punctuation and word "; and" after the word "service", and by deleting the period.

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 12th day of March, 1987.

S.B. 24

CHAPTER 12

AN ACT AUTHORIZING THE SALISBURY CITY COUNCIL TO CONVEY CERTAIN REAL PROPERTY.

The General Assembly of North Carolina enacts:

Section 1. The Salisbury City Council is hereby authorized to convey by good and sufficient deed all of its right, title and interest in and to the hereinafter-described tract of land located in Salisbury, North Carolina, to such nonprofit corporation as the Council in its discretion may determine, at a private sale, with or without monetary consideration; provided said property shall be used solely for the construction of a Senior Citizens Center to be open for use by all senior citizens of Salisbury and Rowan County and provided further that use of said property shall be restricted to such purpose in the deed of conveyance:

BEGINNING at a nail and cap at the point of intersection of the northern margin of Walnut Street with the centerline of the right-of-way of the Yadkin Railroad, and running thence along the northern margin of Walnut Street North 75 degrees 10 minutes East 95.67 feet to an iron; thence North 76 degrees 09 minutes East 233.65 feet to a point; thence North 16 degrees 38 minutes West 215.00 feet to a point; thence North 70 degrees 57 minutes East 50.00 feet to a point; thence North 16 degrees 38 minutes West 232.60 feet to an iron pipe; thence North 15 degrees 10 minutes West 260.15 feet to a point; thence South 75 degrees 00 minutes West 129.2 feet to a nail and cap in the centerline of the right-of-way of the Yadkin Railroad; thence along the centerline of the right-of-way of the Yadkin Railroad a chord bearing and distance South 15 degrees 44 minutes West 92.30 feet to

a point; thence a chord bearing and distance South 70 degrees 56 minutes West 283.25 feet to a point; thence a chord bearing and distance South 10 degrees 41 minutes East 200.00 feet to a point; thence South 40 degrees 50 minutes East 174.50 feet to the point of beginning, said parcel containing 4.38 acres as shown on a survey entitled "Part of the Property of Cone Mills Corp., Salisbury Township, Rowan County, North Carolina," dated July, 1972, prepared by Hudson & Almond.

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 13th day of March, 1987.

AN ACT TO AMEND THE CHARTER OF THE TOWN OF
LANDIS TO IMPLEMENT THE COUNCIL-MANAGER FORM
OF GOVERNMENT.

The General Assembly of North Carolina enacts:

Section 1. Section 1 of Chapter 213, Session Laws of 1975, is amended by rewriting Article VI of the Charter of the Town of Landis to read:

"ARTICLE VI. ADMINISTRATIVE OFFICERS AND EMPLOYEES.

"Sec. 6.1. *Form of Government.* The Town shall operate under the council-manager form of government, as provided in Chapter 160A, Article 7, Part 2 of the General Statutes.

"Sec. 6.2. *Town Manager.* The Board of Aldermen shall appoint a Town Manager who shall be responsible for the administration of all departments of the Town government. The Town Manager shall have all the powers and duties conferred by general law, except as expressly limited by the provisions of this Charter.

"Sec. 6.3. *Town Clerk.* The Board of Aldermen shall appoint a Town Clerk to keep a journal of the proceedings of the Board, to maintain in a safe place all records and documents pertaining to the affairs of the Town, and to perform such other duties as may be required by law or as the Board may direct.

"Sec. 6.4. *Town Tax Collector.* The Board of Aldermen shall appoint a Tax Collector to collect all taxes owed to the Town, subject to general law, this Charter and Town ordinances.

"Sec. 6.5. *Other Officers and Employees.* The Board of Aldermen may authorize additional offices and positions to be filled by appointment of the Town Manager and may organize the Town government as deemed appropriate, including combining any of the

offices provided for in this Article, subject to the requirements of general law."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 13th day of March, 1987.

H.B. 46

CHAPTER 14

AN ACT TO CORRECT A TYPOGRAPHICAL ERROR IN THE ABC LAWS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 18B-601(c)(2) is amended to read:

"A petition requesting an election signed by at least thirty-five percent (35%) of the voters registered in the city at the time the petition was initiated."

Sec. 2. The act is effective upon ratification.

In the General Assembly read three times and ratified this the 13th day of March, 1987.

H.B. 74

CHAPTER 15

AN ACT TO INCREASE THE MEMBERSHIP OF THE TOWN OF MAXTON ABC BOARD TO FOUR MEMBERS AND TO PROVIDE FOR THE APPOINTMENT OF THE NEW MEMBER.

The General Assembly of North Carolina enacts:

Section 1. G.S. 18B-700(a) is amended to read as follows:

"(a) **Membership.** The Town of Maxton Alcoholic Beverage Control Board shall consist of four members appointed for three-year terms. The three members appointed prior to the effective date of this act shall complete their terms as appointed. The new member appointed after the effective date of this act shall be appointed for a three-year term. The appointing authority shall designate one member of the local board as chairman."

Sec. 2. This act applies to the Town of Maxton only.

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 13th day of March, 1987.

S.B. 5

CHAPTER 16

AN ACT TO EXTEND THE TIME BY WHICH A TAX COLLECTOR MUST MAKE HIS ANNUAL REPORT AND SETTLEMENT OF PROPERTY TAXES COLLECTED.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-373(a)(1) is amended by rewriting the first sentence of that subdivision to read: "After July 1 and before he is charged with taxes for the current fiscal year, the tax collector shall make a sworn report to the governing body of the taxing unit showing:

a. A list of the persons owning real property whose taxes for the preceding fiscal year remain unpaid and the principal amount owed by each person; and

b. A list of the persons not owning real property whose personal property taxes for the preceding fiscal year remain unpaid and the principal amount owed by each person."

Sec. 2. G.S. 105-373(a)(3) is amended by deleting the phrase "On the first Monday of July" in the first sentence of that subdivision and substituting the phrase "After July 1 and before he is charged with taxes for the current fiscal year,".

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 16th day of March, 1987.

H.B. 22

CHAPTER 17

AN ACT TO REDUCE THE RATES OF UNEMPLOYMENT INSURANCE CONTRIBUTIONS AND TO ESTABLISH THE EMPLOYMENT SECURITY COMMISSION RESERVE FUND.

The General Assembly of North Carolina enacts:

Section 1. G.S. 96-5(c) is amended by inserting in the second sentence between "June 30, 1947" and the comma the following: "as well as any appropriations of funds by the General Assembly".

Sec. 2. G.S. 96-5 is amended by adding a new subsection to read:

"(f) Employment Security Commission Reserve Fund.--There is created in the State treasury a special trust fund, separate and apart from all other public moneys or funds of this State, to be known as the Employment Security Commission Reserve Fund, hereinafter "Reserve Fund". Except as provided herein and in G.S. 96-9(b)(3)j., all proceeds from the tax as defined in G.S. 96-9(b)(3)j. and collected pursuant to G.S. 96-10 shall be paid into the Reserve Fund. The

moneys in the Reserve Fund may be used by the Commission for loans to the Unemployment Insurance Fund, as security for loans from the federal Unemployment Insurance Trust Fund, and to pay any interest required on advances under Title XII of the Social Security Act as required by G.S. 96-6(f), and shall be continuously available to the Commission for expenditure in accordance with the provisions of this section. The State Treasurer shall be ex officio the treasurer and custodian and shall invest said moneys in accordance with existing law as well as rules and regulations promulgated pursuant thereto. Furthermore, the State Treasurer shall disburse the moneys in accordance with the directions of the Commission and in accordance with such regulations as the Commission may prescribe.

Administrative costs for the collection of the tax and interest payable to the Reserve Fund shall be borne by the Special Employment Administration Fund. Refunds of interest and tax allowable under G.S. 96-9(b)(3)j. shall be made from the Reserve Fund. No taxes shall be collected or paid into this fund during a calendar year when, as of the computation date (August 1) of the preceding calendar year, the balance of the fund equals to or exceeds one percent (1%) of the taxable wages.

The interest earned from investment of the Reserve Fund moneys shall be deposited in a fund hereby established in the State Treasurer's Office, to be known as the 'Worker Training Trust Fund'. These moneys shall be used to:

- (1) fund programs, specifically for the benefit of unemployed workers or workers who have received notice of long-term layoff or permanent unemployment, which will enhance the employability of workers, including, but not limited to, adult basic education, adult high school or equivalency programs, occupational skills training programs, assessment, job counseling and placement programs;
- (2) continue operation of local Employment Security Commission offices throughout the State; or
- (3) provide refunds to employers.

The use of funds from the Worker Training Trust Fund, for the purposes set out in the above paragraph, shall be pursuant to appropriations in the Current Operations Appropriations Act. Funds deposited in the Worker Training Trust Fund prior to July 1, 1987, shall be used as provided in the Current Operations Appropriations Act for 1987-89."

Sec. 3. G.S. 96-9(b)(1) is amended by adding the following at the end:

"Provided that except as provided in subsection (d) hereof, each employer shall pay contributions equal to two and twenty-five hundredths percent (2.25%) of wages paid by him during the calendar year 1987 and each year thereafter with respect to employment occurring after December 31, 1986, which shall be deemed the standard beginning rate of contributions payable by each employer."

Sec. 4. G.S. 96-9(b)(3)d. is amended by adding the following paragraph and table:

"Provided that effective January 1, 1987, the Experience Rating Formula below shall be applicable and the variations from the standard beginning rate of contributions shall be determined and assigned in accordance therewith. New rates shall be assigned to eligible employers effective January 1, 1987, and each January 1 thereafter in accordance with the foregoing Fund Ratio Schedule and this Experience Rating Formula."

EXPERIENCE RATING FORMULA

WHEN THE CREDIT RATIO IS:
AS MUCH AS BUT LESS THAN

RATE SCHEDULES (%)

| | | A | B | C | D | E | F | G | H | I |
|------|------|------|------|------|------|------|------|------|------|------|
| - | 0.2% | 2.70 | 2.70 | 2.70 | 2.70 | 2.70 | 2.70 | 2.50 | 2.30 | 2.10 |
| 0.2% | 0.4% | 2.70 | 2.70 | 2.70 | 2.70 | 2.70 | 2.50 | 2.30 | 2.10 | 1.90 |
| 0.4% | 0.6% | 2.70 | 2.70 | 2.70 | 2.70 | 2.50 | 2.30 | 2.10 | 1.90 | 1.70 |
| 0.6% | 0.8% | 2.70 | 2.70 | 2.70 | 2.50 | 2.30 | 2.10 | 1.90 | 1.70 | 1.50 |
| 0.8% | 1.0% | 2.70 | 2.70 | 2.50 | 2.30 | 2.10 | 1.90 | 1.70 | 1.50 | 1.30 |
| 1.0% | 1.2% | 2.70 | 2.50 | 2.30 | 2.10 | 1.90 | 1.70 | 1.50 | 1.30 | 1.10 |
| 1.2% | 1.4% | 2.50 | 2.30 | 2.10 | 1.90 | 1.70 | 1.50 | 1.30 | 1.10 | 0.90 |
| 1.4% | 1.6% | 2.30 | 2.10 | 1.90 | 1.70 | 1.50 | 1.30 | 1.10 | 0.90 | 0.80 |
| 1.6% | 1.8% | 2.10 | 1.90 | 1.70 | 1.50 | 1.30 | 1.10 | 0.90 | 0.80 | 0.70 |
| 1.8% | 2.0% | 1.90 | 1.70 | 1.50 | 1.30 | 1.10 | 0.90 | 0.80 | 0.70 | 0.60 |
| 2.0% | 2.2% | 1.70 | 1.50 | 1.30 | 1.10 | 0.90 | 0.80 | 0.70 | 0.60 | 0.50 |
| 2.2% | 2.4% | 1.50 | 1.30 | 1.10 | 0.90 | 0.80 | 0.70 | 0.60 | 0.50 | 0.40 |
| 2.4% | 2.6% | 1.30 | 1.10 | 0.90 | 0.80 | 0.70 | 0.60 | 0.50 | 0.40 | 0.30 |
| 2.6% | 2.8% | 1.10 | 0.90 | 0.80 | 0.70 | 0.60 | 0.50 | 0.40 | 0.30 | 0.20 |
| 2.8% | 3.0% | 0.90 | 0.80 | 0.70 | 0.60 | 0.50 | 0.40 | 0.30 | 0.20 | 0.15 |
| 3.0% | 3.2% | 0.80 | 0.70 | 0.60 | 0.50 | 0.40 | 0.30 | 0.20 | 0.15 | 0.10 |
| 3.2% | 3.4% | 0.70 | 0.60 | 0.50 | 0.40 | 0.30 | 0.20 | 0.15 | 0.10 | 0.09 |
| 3.4% | 3.6% | 0.60 | 0.50 | 0.40 | 0.30 | 0.20 | 0.15 | 0.10 | 0.09 | 0.08 |
| 3.6% | 3.8% | 0.50 | 0.40 | 0.30 | 0.20 | 0.15 | 0.10 | 0.09 | 0.08 | 0.07 |
| 3.8% | 4.0% | 0.40 | 0.30 | 0.20 | 0.15 | 0.10 | 0.09 | 0.08 | 0.07 | 0.06 |
| 4.0% | 4.2% | 0.30 | 0.20 | 0.15 | 0.10 | 0.09 | 0.08 | 0.07 | 0.06 | 0.05 |

| | | | | | | | | | | |
|-------------|------|------|------|------|------|------|------|------|------|------|
| 4.2% | 4.4% | 0.20 | 0.15 | 0.10 | 0.09 | 0.08 | 0.07 | 0.06 | 0.05 | 0.04 |
| 4.4% | 4.6% | 0.15 | 0.10 | 0.09 | 0.08 | 0.07 | 0.06 | 0.05 | 0.04 | 0.03 |
| 4.6% | 4.8% | 0.10 | 0.09 | 0.08 | 0.07 | 0.06 | 0.05 | 0.04 | 0.03 | 0.02 |
| 4.8% | 5.0% | 0.09 | 0.08 | 0.07 | 0.06 | 0.05 | 0.04 | 0.03 | 0.02 | 0.01 |
| 5.0% | 5.2% | 0.08 | 0.07 | 0.06 | 0.05 | 0.04 | 0.03 | 0.02 | 0.01 | 0.01 |
| 5.2% | 5.4% | 0.07 | 0.06 | 0.05 | 0.04 | 0.03 | 0.02 | 0.01 | 0.01 | 0.01 |
| 5.4% | 5.6% | 0.06 | 0.05 | 0.04 | 0.03 | 0.02 | 0.01 | 0.01 | 0.01 | 0.01 |
| 5.6% | 5.8% | 0.05 | 0.04 | 0.03 | 0.02 | 0.01 | 0.01 | 0.01 | 0.01 | 0.01 |
| 5.8% | 6.0% | 0.04 | 0.03 | 0.02 | 0.01 | 0.01 | 0.01 | 0.01 | 0.01 | 0.01 |
| 6.0% | 6.2% | 0.03 | 0.02 | 0.01 | 0.01 | 0.01 | 0.01 | 0.01 | 0.01 | 0.01 |
| 6.2% | 6.4% | 0.02 | 0.01 | 0.01 | 0.01 | 0.01 | 0.01 | 0.01 | 0.01 | 0.01 |
| 6.4% & Over | | 0.01 | 0.01 | 0.01 | 0.01 | 0.01 | 0.01 | 0.01 | 0.01 | 0.01 |

Sec. 5. G.S. 96-9(b)(3)i. is hereby repealed.

Sec. 6. G.S. 96-9(b)(3) is amended by adding a new subsection to read:

"j. Effective January 1, 1987, a tax shall be and is hereby imposed upon the contributions and shall be due and payable at the time and in the same manner as the contributions. For each quarter during calendar year 1987 and each calendar year thereafter, if the Reserve Fund is less than one percent (1%) of the taxable wages as determined on the computation date (August 1) of the preceding calendar year, the standard beginning tax rate and the tax rate assigned to any employer subject to either the experience rating formula table in G.S. 96-9(b)(3)d. or the rate schedule for Overdrawn Accounts in G.S. 96-9(b)(3)e. shall be twenty percent (20%) of the contributions due and payable. The collection of this tax, assessment of interest and penalty on unpaid taxes, filing of judgment liens, and enforcement of said liens for unpaid taxes shall be governed by the provisions of G.S. 96-10 where applicable. Any interest and penalties collected pursuant to this subsection shall be paid into the Special Employment Security Administration Fund, and any interest or penalties refunded under this subsection shall be paid out of the Special Employment Security Administration Fund. Except as to taxes unpaid on the date on which they are due and payable, this tax shall not be collectible for any calendar year, if, as of the computation date (August 1) of the preceding year, the balance of the Employment Security Commission Reserve Fund equals to or exceeds one percent (1%) of the taxable wages."

Sec. 7. G.S. 96-9(c)(4)b. is amended by adding the following at the end:

"However, when an account is transferred in its entirety by an employer to a successor on or after January 1, 1987, the transferring employer shall thereafter pay the standard beginning rate of contributions of two and twenty-five hundredths percent (2.25%) and

shall continue to pay at such rate until he qualifies for a reduction, reacquires the account he transferred or acquires the experience rating account of another employer, or is subject to an increase in rate under the conditions prescribed in G.S. 96-9(b)(2) and (3)."

Sec. 8. G.S. 96-12(b)(2) is hereby amended by rewriting the second sentence to provide as follows:

"Effective August 1, 1987, the maximum weekly benefit amount shall be computed as sixty-three percent (63%) of the average weekly insured wage. Thereafter, beginning August 1, 1988, the maximum weekly benefit amount shall be computed as sixty-six and two-thirds percent (66 2/3%) of the average weekly insured wage."

Sec. 9. If this act is ratified prior to March 17, 1987, it shall become effective January 1, 1987; if it is ratified on or after March 17, 1987, it shall become effective January 1, 1988.

In the General Assembly read three times and ratified this the 16th day of March, 1987.

S.B. 19

CHAPTER 18

AN ACT TO PERMIT ALCOHOLIC BEVERAGE LICENSEES WHO ARE REQUIRED TO FURNISH A BOND TO PLEDGE GOVERNMENT BONDS AS COLLATERAL RATHER THAN OBTAIN A BOND FROM A CORPORATE SURETY.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-113.86 is amended as follows:

(1) by deleting the phrase ", secured by a corporate surety," each time it appears in that section; and

(2) by rewriting the second sentences of subsections (a) and (b) to read:

"The bond shall be conditioned on compliance with this Article, shall be payable to the State, shall be in a form acceptable to the Secretary, and shall be secured by a corporate surety or by a pledge of obligations of the federal government, the State, or a political subdivision of the State."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 18th day of March, 1987.

H.B. 49

CHAPTER 19

AN ACT TO AUTHORIZE THE ADMINISTRATIVE OFFICE OF THE COURTS TO CONDUCT A STUDY OF PRESENTENCE REPORTS.

The General Assembly of North Carolina enacts:

Section 1. The Administrative Office of the Courts shall conduct a study concerning the use of presentence reports by judges. Issues to be addressed in the study include the current use of presentence reports, when the presentence report should be prepared, who should prepare the presentence report, the contents of the presentence report, and whether the presentence report should be mandatory for any, or all, offenses.

Sec. 2. The Administrative Office of the Courts shall make a written report to the General Assembly prior to the convening of the 1988 Session of the 1987 General Assembly.

Sec. 3. Nothing in this act shall be construed to obligate the General Assembly to make additional appropriations to implement the provisions of this act.

Sec. 4. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 19th day of March, 1987.

H.B. 50

CHAPTER 20

AN ACT TO DEVELOP A PROGRAM FOR ACADEMIC AND VOCATIONAL EDUCATION TRAINING IN THE DEPARTMENT OF CORRECTION.

The General Assembly of North Carolina enacts:

Section 1. The Department of Correction and the Department of Community Colleges shall jointly develop and submit to the Special Committee on Prisons no later than April, 1988, a comprehensive plan for academic, remedial, vocational, and technical education to adult inmates. This plan shall specify for the system as a whole and each prison unit the programs to be offered; mechanisms for approval, funding, and oversight of programs; divisions of responsibility in delivering programs; mechanisms for ongoing evaluation of programs; provisions for appropriate referral and assignment of inmates to programs; facility, equipment, and staffing needs for implementing the plan; and a schedule of implementation. The plan shall cover a three to five year period, beginning with FY 1988-89.

Sec. 2. Nothing in this act shall be construed to obligate the General Assembly to make additional appropriations to implement the provisions of this act.

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 19th day of March, 1987.

AN ACT TO AUTHORIZE THE CITY OF LEXINGTON TO PURCHASE NATURAL GAS BY USING INFORMAL BID PROCEDURES.

The General Assembly of North Carolina enacts:

Section 1. Section 2 of Chapter 959, Session Laws of 1985, reads as rewritten:

"Sec. 2. This act applies to the City of Wilson, the City of Kings Mountain, the City of Lexington, and the City of Bessemer City only."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 20th day of March, 1987.

AN ACT TO ALLOW EVEN-YEAR ELECTIONS FOR SOME MULTI-COUNTY SANITARY DISTRICTS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 130A-50 is amended by inserting after subsection (b) a new subsection (b1) to read:

"(b1) If a sanitary district:

1. does not share territory with any city as defined by G.S. 160A-1(2), and
2. the sanitary district is in more than one county, the boards of county commissioners in all counties with territory in the sanitary district may set the sanitary district elections to be held on the same date as general elections in even-numbered years under G.S. 163-1 and may extend the terms of any sanitary district board members who are in office at the ratification of this act until the next even-year general election can be held and successors qualified."

Sec. 2. G.S. 163-279(c) is amended by adding at the end of the second sentence, after the term "section" but before the period, the following:

"or in G.S. 130A-50(b1)".

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 20th day of March, 1987.

H.B. 70

CHAPTER 23

AN ACT TO CORRECT THE EFFECTIVE DATE OF THE NORTH CAROLINA THERAPEUTIC RECREATION PERSONNEL CERTIFICATION ACT.

The General Assembly of North Carolina enacts:

Section 1. Section 2 of Chapter 966 of the 1985 Session Laws (1986 Reg. Sess.) is rewritten to read as follows:

"This act shall become effective June 30, 1987."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 20th day of March, 1987.

S.B. 47

CHAPTER 24

AN ACT TO AMEND THE LICENSING PROCESS FOR A LOW-LEVEL RADIOACTIVE WASTE FACILITY BY FIRST REQUIRING THE APPLICANT TO SATISFY THE STATE DEPARTMENT OF HUMAN RESOURCES OF HIS FINANCIAL AND TECHNICAL CAPABILITIES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 104E-10.1 is amended by designating the first full paragraph as subsection (a) and the second full paragraph as subsection (b).

Sec. 2. G.S. 104E-10.1(a), as designated by this act, is amended by adding the following sentence at the end of the first paragraph:

"The approval of a permit shall be contingent upon the applicant first satisfying the department that he has met the above two requirements."

Sec. 3. G.S. 104E-10.1(1) is amended by changing the word "State" to "state".

Sec. 4. This act is effective upon ratification and shall apply to permit applications filed on or after the date of ratification.

In the General Assembly read three times and ratified this the 23rd day of March, 1987.

H.B. 39

CHAPTER 25

AN ACT TO CHANGE THE DATE FOR THE MARTIN LUTHER KING, JR., LEGAL PUBLIC HOLIDAY TO THE SAME DATE PROVIDED BY FEDERAL LAW AND TO PROVIDE FOR A PAID HOLIDAY FOR STATE EMPLOYEES ON THAT DATE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 103-4(a)(1a) is amended by deleting "January 15", and substituting "the third Monday in January".

Sec. 2. G.S. 126-4(5) is amended by adding the following at the end: "The legal public holidays established by the Commission as paid holidays for State employees shall include Martin Luther King, Jr.'s, Birthday for all years after 1987. Provided, however, that the Commission shall not provide for a greater number of total paid holidays than were established for the year 1986. The Commission shall not delete Veterans Day as a holiday."

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 25th day of March, 1987.

H.B. 238

CHAPTER 26

AN ACT TO PROVIDE THAT THE TOWN OF RIVER BEND SHALL NOT HAVE EXTRATERRITORIAL PLANNING AND ZONING JURISDICTION.

The General Assembly of North Carolina enacts:

Section 1. The Charter of the Town of River Bend, as approved by the Municipal Board of Control and filed with the Secretary of State on January 14, 1981, is amended by adding a new section to read:

"Section VI. The Town may not exercise any extraterritorial jurisdiction or extraterritorial powers under Article 19 of Chapter 160A of the General Statutes."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 25th day of March, 1987.

S.B. 20

CHAPTER 27

AN ACT TO ELIMINATE THE REQUIREMENT THAT A NONRESIDENT RETAIL OR WHOLESALE MERCHANT REGISTER WITH THE DEPARTMENT OF REVENUE FOR SALES TAX PURPOSES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-164.3(10) is rewritten to read:

"(10) 'Nonresident retail or wholesale merchant' means a person who does not have a place of business in this State, is engaged in the business of acquiring, by purchase, consignment, or otherwise, tangible personal property and selling the property outside the State, and is registered for sales and use tax purposes in a taxing jurisdiction outside the State."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 26th day of March, 1987.

H.B. 38

CHAPTER 28

AN ACT TO ABOLISH THE KANNAPOLIS STREET PLANNING BOARD, AND DELETE A STATUTORY REFERENCE TO THAT BOARD.

The General Assembly of North Carolina enacts:

Section 1. Chapter 945, Session Laws of 1953, is repealed.

Sec. 2. The last paragraph of G.S. 153A-240 is repealed.

Sec. 3. All assets and liabilities of the Kannapolis Street Planning Board shall vest in the City Of Kannapolis. The Kannapolis Street Planning Board shall take any necessary action to so transfer the assets.

Sec. 4. This act shall become effective 30 days after ratification, except that assets shall be transferred before then as provided by Section 3 of this act.

In the General Assembly read three times and ratified this the 26th day of March, 1987.

H.B. 54

CHAPTER 29

AN ACT TO CHANGE THE LIMIT ON THE AMOUNT OF FUNDS CLERKS MAY RECEIVE ON BEHALF OF MINORS AND INCOMPETENTS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 7A-111 is rewritten to read:

"(a) When a minor under 18 years of age is named beneficiary in a policy or policies of insurance, and the insured dies prior to the majority of such minor, and the proceeds of each individual policy do not exceed twenty-five thousand dollars (\$25,000) such proceeds may be paid to and, if paid, shall be received by the public guardian or clerk of the superior court of the county wherein the beneficiary is domiciled. The receipt of the public guardian or clerk shall be a full and complete discharge of the insurer issuing the policy or policies to the extent of the amount paid to such public guardian or clerk.

Any person having in his possession twenty-five thousand dollars (\$25,000) or less for any minor under 18 years of age for whom there is no guardian, may pay such monies into the office of the public guardian, if any, or the office of the clerk of superior court of the county of the recipient's domicile. The receipt of the public guardian or clerk shall constitute a valid release of the payor's obligation to the extent of the sum delivered to the clerk.

The clerk is authorized under this section to receive, to administer and to disburse the monies held in such sum or sums and at such time or times as in his judgment is in the best interest of the child, except that the clerk must first determine that the parents or other persons responsible for the child's support and maintenance are financially unable to provide the necessities for such child, and also that the child is in need of maintenance and support or other necessities, including, when appropriate, education. The clerk shall require receipts or paid vouchers showing that the monies disbursed under this section were used for the exclusive use and benefit of the child.

(b) When an adult who is mentally incapable on account of sickness, old age, disease or other infirmity to manage his own affairs is named beneficiary in a policy or policies of insurance, and the insured dies during the incapacity of such adult, and the proceeds of each individual policy do not exceed five thousand dollars (\$5,000) such proceeds may be paid to and, if paid, shall be received by the public guardian or clerk of the superior court of the county wherein the beneficiary is domiciled. A certificate of mental incapacity, signed by a physician or reputable person who has had an opportunity to observe the mental condition of an adult beneficiary, filed with the clerk, is prima facie evidence of the mental incapacity of such adult, and authorizes the clerk to receive and administer funds under this section. The receipt of the public guardian or clerk shall be a full and complete discharge of the insurer issuing the policy or policies to

Any person having in his possession five thousand dollars (\$5,000) or less for any incapacitated adult for whom there is no guardian, may pay such monies into the office of the public guardian, if any, or the office of the clerk of superior court of the county of the recipient's domicile. The clerk's receipt shall constitute a valid release of the payor's obligation to the extent of the sum delivered to the clerk.

The clerk is authorized to receive, to administer and, upon a finding of fact that it is in the best interest of the incapacitated adult, to disburse funds directly to a creditor, a relative or to some discreet and solvent neighbor or friend for the purpose of handling the property and affairs of the incapacitated adult. The clerk shall require receipts or paid vouchers showing that the monies disbursed under this section were used for the exclusive use and benefit of the incapacitated adult.

(c) Any monies paid to the clerk of the superior court under subsection (a) of this section shall also include the name, last known address, social security number or taxpayer identification number of the beneficiary or payee, and the name and address of the nearest relative of the beneficiary or payee.

(d) The determination of incapacity authorized in subsection (b) of this section is separate and distinct from the procedure for the determination of incompetency provided in Chapter 35."

Sec. 4. This act shall become effective October 1, 1987.

In the General Assembly read three times and ratified this the 26th day of March, 1987.

H.B. 80

CHAPTER 30

AN ACT TO PROVIDE FOR A SPECIAL RESERVE FOR THE FUNDS RECEIVED BY IREDELL COUNTY FROM THE SALE OF LOWRANCE HOSPITAL.

The General Assembly of North Carolina enacts:

Section 1. (a) The funds received by Iredell County from the sale of Lowrance Hospital, Inc., and interest earned thereon, shall be held by the county in a special reserve. The reserve shall be administered generally in accordance with the procedures for capital reserve funds in Part 2 of Article 3 of Chapter 159 of the General Statutes, except as provided by this act.

(b) Until January 2, 1991, no funds may be expended from the reserve except deductions from the sale price for contractually assumed obligations, closing costs, claims arising from the operation of the hospital prior to its sale, and the reacquisition costs in the event of default by the purchaser.

(c) After January 1, 1991, funds may be expended by Iredell County from the special reserve only after receipt of recommendations from a special committee comprised of five members appointed by the board of county commissioners of Iredell County as follows:

- (1) one representative from the medical staff of Lowrance Hospital to be chosen by the medical staff;
- (2) one member of the board of county commissioners of Iredell County chosen by that board;
- (3) one member of the Mooresville Town Council chosen by that council;
- (4) one member of the Lowrance Hospital Inc., Board of Directors chosen by that board; and
- (5) one representative of the Mooresville/South Iredell Chamber of Commerce to be chosen by the Mooresville/South Iredell Chamber of Commerce.

Members of the committee shall serve four-year terms, with the initial terms expiring on December 31, 1990. Vacancies shall be filled by the appointing authority for the remainder of the unexpired term.

(d) It is intended that the funds from the sale of the Lowrance Hospital, Inc., be used for health-related purposes in the Lowrance Hospital area located within Iredell County.

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 26th day of March, 1987.

H.B. 106

CHAPTER 31

AN ACT TO EXEMPT THE TOWN OF FARMVILLE FROM HAVING TO COMPLY WITH THE PUBLIC BIDDING LAW WITH RESPECT TO THE MAY HOUSE BUILDING AND GROUNDS DEVELOPMENT AS A PUBLIC PARK TO BE MADE WITH PRIVATE FUNDS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143-135.2 is rewritten to read:

"This Article shall not apply to building contracts let by a State agency for restoration of an historic building or structure or to the Town of Farmville for the renovation of the May House and the property surrounding it which were bequeathed to the Town by Tabitha M. DeVisconti for a public park."

Sec. 2. This act shall apply only to the Town of Farmville.

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 26th day of March, 1987.

S.B. 64

CHAPTER 32

AN ACT TO AUTHORIZE NASH COUNTY TO LEVY A ROOM OCCUPANCY AND TOURISM DEVELOPMENT TAX.

The General Assembly of North Carolina enacts:

Section 1. Occupancy tax. (a) Authorization and scope. The Nash County Board of Commissioners may by resolution, after not less than ten (10) days' public notice and after a public hearing held pursuant thereto, levy a room occupancy tax of three percent (3%) of the gross receipts derived from the rental of any room, lodging, or similar accommodation furnished by a hotel, motel, inn, or similar place within the county that is subject to sales tax imposed by the State under G.S. 105-164.4(3). This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations.

(b) Collection. Every operator of a business subject to the tax levied under this act shall, on and after the effective date of the levy of the tax, collect the tax. This tax shall be collected as part of the charge for furnishing a taxable accommodation. The tax shall be stated and charged separately from the sales records, and shall be paid by the purchaser to the operator of the business as trustee for and on account of the county. The tax shall be added to the sales price and shall be passed on to the purchaser instead of being borne by the operator of the business. The county shall design, print, and furnish to all appropriate businesses and persons in the county the necessary forms for filing returns and instructions to ensure the full collection of the tax. An operator of a business who collects the occupancy tax levied under this act may deduct from the amount remitted to the county a discount of three percent (3%) of the amount collected.

(c) Administration. The county shall administer a tax levied under this act. A tax levied under this act is due and payable to the county finance officer in monthly installments on or before the 15th day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the 15th day of each month, prepare and render a return on a form prescribed by the county. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied.

A return filed with the county finance officer under this act is not a public record as defined by G.S. 132-1 and may not be disclosed except as required by law.

(d) Penalties. A person, firm, corporation, or association who fails or refuses to file the return required by this act shall pay a penalty of ten dollars (\$10.00) for each day's omission. In case of failure or refusal to file the return or pay the tax for a period of thirty (30) days after the time required for filing the return or for paying the tax, there shall be an additional tax, as a penalty, of five percent (5%) of the tax due for each additional month or fraction thereof until the tax is paid.

Any person who willfully attempts in any manner to evade a tax imposed under this act or who willfully fails to pay the tax or make and file a return shall, in addition to all other penalties provided by law, be guilty of a misdemeanor and shall be punishable by a fine not to exceed one thousand dollars (\$1,000), imprisonment not to exceed six months, or both. The Board of Commissioners may, for good cause shown, compromise or forgive the penalties imposed by this subsection.

(e) Distribution and use of tax revenue. Nash County shall, on a quarterly basis, remit the net proceeds of the occupancy tax to the Nash Tourism Development Authority. The Authority may spend funds remitted to it under this subsection only to promote travel and tourism in Nash County, to sponsor tourist-oriented events and activities in Nash County, and to finance tourist-related capital projects in Nash County, such as the construction of a civic center and utilities within Nash County. As used in this subsection, "net proceeds" means gross proceeds less the cost to the county of administering and collecting the tax, as determined by the finance officer.

(f) Effective date of levy. A tax levied under this act shall become effective on the date specified in the resolution levying the tax. That date must be the first day of a calendar month, however, and may not be earlier than the first day of the second month after the date the resolution is adopted.

(g) Repeal. A tax levied under this act may be repealed by a resolution adopted by the Nash County Board of Commissioners. Repeal of a tax levied under this act does not affect a liability for a tax that was attached before the effective date of the repeal, nor does it affect a right to a refund of a tax that accrued before the effective date of the repeal.

Sec. 2. Tourism Development Authority. (a) Appointment and membership. When the Board of Commissioners adopts a resolution levying a room occupancy tax under this act, it shall also adopt a resolution creating a county Tourism Development Authority, which

shall be a public authority under the Local Government Budget and Fiscal Control Act. The resolution shall provide for the membership of the Authority including the members' qualifications and terms of office, and for the filling of vacancies on the Authority. The Board of Commissioners shall designate one member of the Authority as chair and shall determine the compensation, if any, to be paid to members of the Authority.

The Authority shall meet at the call of the chair and shall adopt rules of procedure to govern its meetings. The Finance Officer for Nash County shall be the ex officio finance officer of the Authority.

(b) Duties. The Authority shall promote travel, tourism, and conventions in the county, sponsor tourist-related events and activities in the county, and finance tourist-related capital projects in the county, such as the construction of a civic center and utilities.

(c) Reports. The Authority shall report quarterly and at the close of the fiscal year to the Board of County Commissioners on its receipts and expenditures for the preceding quarter and for the year in such detail as the Board may require.

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 27th day of March, 1987.

H.B. 169

CHAPTER 33

AN ACT TO AUTHORIZE THE LAWFUL TAKING OF BLACK BEARS IN BEAUFORT COUNTY.

The General Assembly of North Carolina enacts:

Section 1. Chapter 90 of the Session Laws of 1977 is repealed.

Sec. 2. The season for hunting black bears in Beaufort County during 1987 shall be from November 9 to November 14, both dates inclusive.

Sec. 3. The seasons for hunting black bears in Beaufort County in 1988 and succeeding years shall be established as authorized by Chapter 113 of the General Statutes of North Carolina.

Sec. 4. G.S. 113-133.1(e) is amended in the chart by deleting the language: "; Session Laws 1977, Chapter 90" in the entry for Beaufort County.

Sec. 5. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 27th day of March, 1987.

H.B. 181

CHAPTER 34

AN ACT TO REPEAL THE HOSPICE SUNSETTING PROVISION.

The General Assembly of North Carolina enacts:

Section 1. Section 8 of Chapter 1022, 1983 Session Laws, Regular Session 1984, is amended by deleting the phrase ", through June 30, 1987".

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 27th day of March, 1987.

H.B. 214

CHAPTER 35

AN ACT TO CONFORM THE HOURS OF ALCOHOL SALES TO
FEDERAL DAYLIGHT SAVINGS TIME.

The General Assembly of North Carolina enacts:

Section 1. G.S. 18B-1004(b) reads as rewritten:

"(b) Daylight Savings Time. From the ~~last Sunday in April~~ first Sunday in April until the last Sunday in October, sales of alcoholic beverages may continue until 2:00 A.M. rather than 1:00 A.M., and consumption of alcoholic beverages may continue until 2:30 A.M. rather than 1:30 A.M., on any licensed premises."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 27th day of March, 1987.

S.B. 32

CHAPTER 36

AN ACT TO PROVIDE THAT IN ALL ELECTIONS WITH
VOTING DEVICES REQUIRING THE VOTER TO PUNCH OR
MARK A NUMBER IN ORDER TO CAST A STRAIGHT-PARTY
TICKET, THE NUMBER SHALL BE UNIFORM STATEWIDE.

The General Assembly of North Carolina enacts:

Section 1. Chapter 163 of the General Statutes is amended by adding a new section to read:

"§ 163-163. *Standardized straight-party designation.*--In any general election in which voting devices are used upon which the voter must punch or mark a number in order to cast a straight-party ticket, the number used for each party shall be uniform statewide. The State Board of Elections shall adopt regulations to implement this section."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 30th day of March, 1987.

S.B. 79

CHAPTER 37**AN ACT TO CHANGE THE CANDIDATE FILING PERIOD FOR
THE CALDWELL COUNTY BOARD OF EDUCATION.**

The General Assembly of North Carolina enacts:

Section 1. Section 4 of Chapter 1273, Session Laws of 1973, reads as rewritten:

"Sec. 4. All candidates for membership on the Caldwell County Board of Education shall file for a nonpartisan election with the Caldwell County Board of Elections a notice of such candidacy ~~by noon on the last~~ during the period beginning at 12:00 noon on the second Monday in July and ending at 12:00 noon on the second Monday in August prior to the General Election, and this election shall be held at the time of said General Election. Each candidate shall pay a filing fee of five dollars (\$5.00) and in addition shall certify in writing that he is a bona fide resident of Caldwell County and a qualified registered voter therein. Persons elected shall assume office on the first Monday of December following the General Election. The requirements set forth in this section, together with such requirements as are now or may be hereafter provided for by the North Carolina General Statutes, are inclusive and constitute the sole criteria for membership on the Caldwell County Board of Education."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 30th day of March, 1987.

S.B. 116

CHAPTER 38**AN ACT TO PERMIT THE TAKING OF ONE ANTLERLESS
DEER DURING A MUZZLE-LOADING FIREARMS SEASON
WITH A BAG LIMIT OF FIVE OR MORE.**

The General Assembly of North Carolina enacts:

Section 1. G.S. 113-291.2(a) is amended by adding a second paragraph to read:

"Where there is a muzzle-loading firearm season for deer, with a bag limit of five or more, one antlerless deer may be taken. Dogs may not be used for hunting deer during such season."

Sec. 2. This act shall become effective October 1, 1987.

In the General Assembly read three times and ratified this the 30th day of March, 1987.

S.B. 141

CHAPTER 39

AN ACT TO PROHIBIT HUNTING FROM THE RIGHTS-OF-WAY OF PUBLIC ROADS IN BURKE AND CALDWELL COUNTIES.

The General Assembly of North Carolina enacts:

Section 1. It is unlawful for any person to hunt any bird or animal except for bear, on or from the right-of-way of any public road, without the permission of the owner or lessee of the land abutting the right-of-way from which he is hunting.

Sec. 2. Violation of this act is a misdemeanor punishable for a first conviction by a fine of not less than ten dollars (\$10.00) nor more than fifty dollars (\$50.00) or imprisonment not to exceed 30 days, and punishable for a second conviction within three years by a fine of not less than fifty dollars (\$50.00) nor more than two hundred dollars (\$200.00), by imprisonment not to exceed 90 days, or by both.

Sec. 3. This act is enforceable by law enforcement officers of the Wildlife Resources Commission, by deputy sheriffs, and by other peace officers with general subject matter jurisdiction.

Sec. 4. This act applies only to the counties of Burke and Caldwell.

Sec. 5. This act shall become effective October 1, 1987.

In the General Assembly read three times and ratified this the 30th day of March, 1987.

H.B. 228

CHAPTER 40

AN ACT TO PERMIT THE DEPARTMENT OF CORRECTION TO PROVIDE LAUNDRY SERVICES FOR THE U.S. OLYMPIC FESTIVAL-'87.

The General Assembly of North Carolina enacts:

Section 1. (a) Notwithstanding the provisions of G.S. 66-58(b)(16), the Department of Correction may provide laundry services to U.S. Olympic Festival-'87. No State funds shall be appropriated for the laundry services; payment for the laundry services will be made by North Carolina Amateur Sports.

(b) Laundry services provided by the Department of Correction under this act are limited to wet-washing, drying and ironing of flatware or flat goods such as towels, sheets, bedding and linens and uniforms and apparel used in conjunction with the U.S. Olympic Festival-'87 and do not include processing by any dry cleaning methods. The State shall incur no liability for any damages resulting from the laundry services provided by the Department of Correction.

Sec. 2. This act shall become effective July 10, 1987, and shall expire on July 31, 1987.

In the General Assembly read three times and ratified this the 30th day of March, 1987.

H.B. 278

CHAPTER 41

AN ACT TO ALLOCATE FUNDS FROM THE SPECIAL RESERVE FOR OIL OVERCHARGE FUNDS TO PAY THE ATTORNEYS WHO REPRESENT THE STATE IN THE OIL OVERCHARGE FUND LITIGATION.

The General Assembly of North Carolina enacts:

Section 1. Effective June 30, 1986, Section 182 of Chapter 1014 of the 1985 Session Laws, Regular Session 1986, is amended by adding a new subsection to read:

"(d) Funds in the amount of four hundred sixteen thousand seven hundred sixty four dollars (\$416,764) are allocated from the Special Reserve for Oil Overcharge Funds to pay the attorneys who represent the State in the oil overcharge litigation.

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 30th day of March, 1987.

H.B. 154

CHAPTER 42

AN ACT TO AUTHORIZE MORE COUNTIES TO REGULATE ABANDONED, JUNKED VEHICLES FOR AESTHETIC PURPOSES.

The General Assembly of North Carolina enacts:

Section 1. The first sentence of Section 1 of Chapter 841 of the 1983 Session Laws is amended by adding immediately after "Dare" the words ", Halifax, Wake, Iredell, Mecklenburg,".

Sec. 2. The first sentence of Section 2 of Chapter 841 of the 1983 Session Laws is amended by adding immediately after "Dare" the words ", Halifax, Wake, Iredell, Mecklenburg,".

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 31st day of March, 1987.

S.B. 23

CHAPTER 43

AN ACT TO DELETE REFERENCES IN THE PROPERTY TAX STATUTES TO THE OBSOLETE POSITION OF LIST TAKER.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-273(10) is repealed.

Sec. 2. G.S. 105-296 is amended as follows:

(1) by deleting the words "and appraising" in the first sentence of that section and substituting the phrase ", appraisal, and assessment";

(2) by deleting the words "or she" and the words "or her respective" in subsection (b) of that section; and

(3) by deleting subsections (d), (e), (f), and (i).

Sec. 3. G.S. 105-298 is repealed.

Sec. 4. G.S. 105-303(b)(2) and 105-308 are each amended by deleting the phrase "(or proper list taker)".

Sec. 5. The last paragraph of G.S. 105-307 is rewritten to read:

"The assessor may conduct preparatory work before the listing period begins, but he may not make a final appraisal of property before the day as of which the value of the property is to be determined under G.S. 105-285."

Sec. 6. G.S. 105-309 is amended as follows:

(1) by deleting the words "or proper list taker" in subsection (a);

(2) by deleting the words "or list taker" in subsection (b) and in subdivision (d)(2); and

(3) by rewriting subdivision (d) (1) to read:

"(1) If the assessor considers it necessary to obtain a complete listing of personal property, he may require a taxpayer to submit additional information, inventories, or itemized lists of personal property."

Sec. 7. G.S. 105-311(a) is amended by deleting the words "or proper list taker".

Sec. 8. G.S. 105-328 is amended as follows:

(1) by rewriting subdivisions (b) (2) and (3) to read:

"(2) With the approval of the governing body, a municipal assessor may employ listers, appraisers, and clerical assistants necessary to carry out the listing, appraisal, assessing, and billing functions required by law.

(3) A municipal assessor and the persons employed by him have the same powers and duties as their county equivalents with respect to property subject to taxation by a city or town."; and

(2) by deleting the phrase "list takers, and assistants" each time it appears in subdivision (b) (6) and substituting the phrase "and persons employed by an assessor".

Sec. 9. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 2nd day of April, 1987.

S.B. 29

CHAPTER 44

AN ACT TO PROVIDE THAT RESOLUTIONS OF CONSIDERATION ADOPTED UNDER THE ANNEXATION LAWS DO NOT CONFER ANY JURISDICTION ON A MUNICIPALITY AS AGAINST ANY OTHER MUNICIPALITY.

The General Assembly of North Carolina enacts:

Section 1. G.S. 160A-37(i) reads as rewritten:

"(i) No resolution of intent may be adopted under subsection (a) of this section unless the city council (or a planning agency created or designated under either G.S. 160A-361 or the charter) has, by resolution adopted at least one year prior to adoption of the resolution of intent, identified the area as being under consideration for annexation; provided, adoption of such resolution of consideration shall not confer prior jurisdiction over the area as to any other city. The area described under the resolution of intent may comprise a smaller area than that identified by the resolution of consideration. The resolution of consideration may have a metes and bounds description or a map, shall remain effective for two years after adoption, and shall be filed with the city clerk."

Sec. 2. G.S. 160A-49(i) reads as rewritten:

"(i) No resolution of intent may be adopted under subsection (a) of this section unless the city council (or planning agency created or designated under either G.S. 160A-361 or the charter) has, by resolution adopted at least one year prior to adoption of the resolution of intent, identified the area as being under consideration for annexation; provided, adoption of such resolution of consideration shall not confer prior jurisdiction over the area as to any other city. The area described under the resolution of intent may comprise a smaller area than that identified by the resolution of consideration. The resolution of consideration may have a metes and bounds description or a map and shall remain effective for two years after adoption, and shall be filed with the city clerk."

Sec. 3. This act is effective from and after June 29, 1983, except that it does not affect litigation pending on the date of ratification.

In the General Assembly read three times and ratified this the 2nd day of April, 1987.

H.B. 34

CHAPTER 45

AN ACT TO CHANGE THE TITLE "TAX SUPERVISOR" TO "ASSESSOR".

The General Assembly of North Carolina enacts:

Section 1. Subchapter II of Chapter 105 of the General Statutes is amended by deleting the words "tax supervisor" or "tax supervisors" each time they appear in the following statutes and substituting the word "assessor" or "assessors", as appropriate:

G.S. 105-277.1(c)(1) and (2).

G.S. 105-277.4(a), (b), and (b1).

G.S. 105-277.5.

G.S. 105-277.6(a).

G.S. 105-277.7.

G.S. 105-282.1.

G.S. 105-286(b).

G.S. 105-289(i).

G.S. 105-294(b).

G.S. 105-295.

G.S. 105-296(a), (c), and (h).

G.S. 105-297.

G.S. 105-302(c) (6) and (9).

G.S. 105-302.1.

G.S. 105-303.

G.S. 105-306(c)(5).

G.S. 105-307.

G.S. 105-308.

G.S. 105-309.

G.S. 105-311.

G.S. 105-312.

G.S. 105-314(b).

G.S. 105-315(a).

G.S. 105-316(a).

G.S. 105-317(b).

G.S. 105-321(a).

G.S. 105-322(d) and (g)(2)c.

G.S. 105-325.

G.S. 105-326(b).

G.S. 105-328(b).
G.S. 105-366(d)(1).
G.S. 105-368(i).
G.S. 69-25.15(c).
G.S. 130A-62(c).
G.S. 153A-325.

Sec. 2. All sections of the North Carolina General Statutes that are not listed in Section 1 of this act and that contain the words "tax supervisor" or "tax supervisors" are amended by deleting the words "tax supervisor" or "tax supervisors" and substituting the words "assessor" or "assessors", as appropriate.

Sec. 3. A reference in a local act to the county tax supervisor shall be construed as a reference to the county assessor.

Sec. 4. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 3rd day of April, 1987.

H.B. 87

CHAPTER 46

AN ACT TO REQUIRE MUNICIPAL ASSESSORS THAT APPRAISE PROPERTY TO HAVE THE SAME QUALIFICATIONS AS COUNTY ASSESSORS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-289(d)(2) and (3) are rewritten to read:

- "(2) A program for testing the qualifications of an assessor and other persons engaged in the appraisal of property for a county or municipality; and
- (3) A certification program for an assessor and other persons engaged in the appraisal of property for a county or municipality."

Sec. 2. G.S. 105-328(b)(1) is amended by deleting the fourth and fifth sentences of that subdivision and substituting the following sentence to read:

"A person appointed as a municipal assessor shall meet the qualifications and requirements set for a county assessor under G.S. 105-294."

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 3rd day of April, 1987.

S.B. 120

CHAPTER 47

AN ACT TO REVISE THE ELIGIBILITY REQUIREMENTS FOR COMMUNITY SERVICE PAROLE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 15A-1371(h) and G.S. 15A-1380.2(h) are amended between the fourth and fifth paragraphs by adding a new paragraph to read:

"For purposes of subdivision (1), a person is considered to be serving his first active sentence the term of which exceeds one year if he

- a. was convicted or sentenced in the same session of court of multiple offenses arising from the same transaction or series of transactions,
- b. is serving an active sentence of at least one year for one of the multiple offenses described in sub-subdivision a., and
- c. had not received an active sentence of a least one year prior to being sentenced for the multiple offenses described in sub-subdivision a."

Sec. 2. This act is effective upon ratification and applies to all prisoners sentenced prior to, on, or after that date.

In the General Assembly read three times and ratified this the 6th day of April, 1987.

H.B. 33

CHAPTER 48

AN ACT ESTABLISHING THE AMOUNT OF OCCUPANCY TAX
REVENUE IN HAYWOOD COUNTY THAT MAY BE USED
FOR ADMINISTRATIVE EXPENSES.

The General Assembly of North Carolina enacts:

Section 1. Part V of Chapter 908 of the 1983 Session Laws, as amended by Chapter 942 of the 1985 Session Laws (Reg. Sess. 1986), is amended by adding the following sentence at the end of Section 14 to read:

"The Authority may use no more than fifteen percent (15%) of these funds for administrative expenses of the Authority."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 6th day of April, 1987.

H.B. 289

CHAPTER 49

AN ACT TO MAKE A TECHNICAL CORRECTION RELATING
TO ACCIDENT REPORTING AFTER AN ACCIDENT
INVOLVING A COMMON CARRIER AND ANOTHER
VEHICLE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-166.1(g) is repealed.

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 6th day of April, 1987.

H.B. 19

CHAPTER 50

AN ACT TO ALLOW THE TOWN OF KENANSVILLE, THE COUNTY OF DUPLIN, AND THE DUPLIN COUNTY BOARD OF EDUCATION TO LEASE CERTAIN PROPERTY TO THE DUPLIN COUNTY AGRI-BUSINESS COUNCIL, INC., FOR THE PURPOSE OF CREATING AN AGRICULTURAL DISPLAY AREA AND LIVESTOCK ARENA.

The General Assembly of North Carolina enacts:

Section 1. Notwithstanding the provisions of G.S. 160A-272 and G.S. 115C-518, the Town of Kenansville, Duplin County, and the Duplin County Board of Education may lease to the Duplin County Agri-Business Council, Inc., their interests in the Old Kenansville Elementary School, the Kenan Memorial Auditorium, Turkey Stadium, and any property adjacent to any of those sites, for terms of not more than 99 years employing only the procedures set forth in G.S. 160A-272 for leases of less than 10 years.

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 9th day of April, 1987.

H.B. 88

CHAPTER 51

AN ACT TO AMEND THE CHARTER OF THE CITY OF GREENSBORO TO PROVIDE ENFORCEMENT POWERS FOR THE FAIR HOUSING ORDINANCE.

The General Assembly of North Carolina enacts:

Section 1. Chapter III, Subchapter D of the Charter of the City of Greensboro, as set forth in Chapter 132 of the 1981 Session Laws, is amended by adding new sections following Section 3.64 to read:

"§ 3.64.1. *Enforcement.*--The appropriate commission or committee as designated by the City Council may, by ordinance of the City Council, be granted the power and authority to:

- (1) Subpoena and examine witnesses under oath or affirmation; administer oaths, compel the production of documents and any other evidence related to the matter of a complaint; and require answers to interrogatories;

- (2) Apply to the Superior Court Division of the General Court of Justice, upon the failure of any person to respond to or comply with a lawful interrogatory, request for production of documents, or subpoena, for an order requiring such person to respond or comply; and the court shall have jurisdiction to issue any order after notice to all proper parties.

" § 3.64.2. *Complaints and other records.*--The City Council may provide that complaints filed with any commission or committee pursuant to the ordinance and the results of the commission's or committee's investigations, discovery or attempts at conciliation, in whatever form prepared and preserved, may not be subject to inspection, examination, or copying under the provisions of Chapter 132 of the General Statutes.

" § 3.64.3. *Meetings.*--The City Council may provide that the provisions relating to meetings of governmental bodies, under Article 33C of Chapter 143 of the General Statutes, shall not apply to the activity of any commission or committee authorized to enforce the ordinance, to the extent that the commission or committee is receiving a complaint or conducting an investigation, discovery, or conciliation pertaining to a complaint filed pursuant to the ordinance."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 9th day of April, 1987.

H.B. 196

CHAPTER 52

AN ACT TO AUTHORIZE WILDLIFE ENFORCEMENT OFFICERS TO ENFORCE THE LITTERING LAW IN McDOWELL COUNTY.

The General Assembly of North Carolina enacts:

Section 1. Wildlife Enforcement Officers are authorized to enforce the provisions of G.S. 14-399.

Sec. 2. This act applies only to McDowell County.

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 9th day of April, 1987.

H.B. 208

CHAPTER 53

AN ACT TO AUTHORIZE AN INCREASE IN THE INFORMAL BID LIMITS RELATING TO THE LETTING OF PUBLIC CONTRACTS BY THE CITY OF GREENSBORO.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143-129 is amended by deleting "thirty thousand dollars (\$30,000)", and substituting "fifty thousand dollars (\$50,000)".

Sec. 2. G.S. 143-129 is further amended by deleting "ten thousand dollars (\$10,000)", and substituting "thirty thousand dollars (\$30,000)".

Sec. 3. G.S. 143-131 is amended by deleting "two thousand five hundred dollars (\$2,500)", and substituting "ten thousand dollars (\$10,000)".

Sec. 4. This act applies to the City of Greensboro only.

Sec. 5. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 9th day of April, 1987.

H.B. 212

CHAPTER 54

AN ACT TO INCREASE THE PENALTY FOR PARKING VIOLATIONS THAT ARE COMMITTED IN THE TOWN OF KERNERSVILLE AND ARE ESTABLISHED BY RELYING ON THE PRIMA FACIE RULE OF EVIDENCE.

The General Assembly of North Carolina enacts:

Section 1. Section 2 of Chapter 160 of the 1983 Session Laws, as amended by Chapters 152 and 813 of the 1985 Session Laws reads as rewritten:

"Sec. 2. This act applies only to the following cities: Greenville, Jacksonville, and Winston-Salem, and to the Town of Kernersville."

Sec. 2. This act is effective upon ratification and applies to infractions committed on or after that date.

In the General Assembly read three times and ratified this the 9th day of April, 1987.

H.B. 220

CHAPTER 55

AN ACT TO CHANGE THE DATE OF THE NONPARTISAN MITCHELL COUNTY BOARD OF EDUCATION ELECTION FROM MAY TO NOVEMBER.

The General Assembly of North Carolina enacts:

Section 1. The Mitchell County Board of Education shall be elected beginning in 1988 at the time of the general election as set by G.S. 163-1. The election shall be conducted on a nonpartisan

plurality basis, with the results determined in accordance with G.S. 163-292. Candidates shall file not earlier than noon on the first Monday in June and not later than noon on the last Friday in July. Except as provided by this act, or any local act, elections shall be held in accordance with the provisions of G.S. 115C-37.

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 9th day of April, 1987.

H.B. 223

CHAPTER 56

AN ACT TO ALLOW THE TOWN OF TRYON TO CONVEY TO
THE POLK COUNTY COMMUNITY FOUNDATION, INC.,
CERTAIN REAL ESTATE AT PRIVATE SALE.

Whereas, the Polk County Community Foundation conveyed to the Town of Tryon a certain parcel of land located in the Town of Tryon; and

Whereas, it was understood by all parties involved that with the granting of this parcel of land, the Town of Tryon would develop this parcel and adjoining parcels as a park; and

Whereas, the acquisition of adjoining parcels has become impossible; and

Whereas, the Town of Tryon wishes to convey back to the Polk County Community Foundation, Inc., the above mentioned parcel for the sum of one dollar (\$1.00); and

Whereas, the Polk County Community Foundation, Inc., has agreed to purchase the above mentioned parcel from the Town of Tryon for the sum of one dollar (\$1.00); Now, therefore,

The General Assembly of North Carolina enacts:

Section 1. Notwithstanding Article 12 of Chapter 160A of the General Statutes, the Town of Tryon may convey to the Polk County Community Foundation, Inc., at private sale with or without monetary consideration that certain real estate located at 609 Lynn Road, in the Town of Tryon, North Carolina, described in a deed dated the 18th day of September, 1981, from the Polk County Community Foundation, Inc., to the Town of Tryon and which is recorded in the Office of the Register of Deeds of Polk County in Book 178 at Page 588 and Page 589.

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 9th day of April, 1987.

H.B. 239

CHAPTER 57

AN ACT TO ALLOW SCOTLAND COUNTY TO CONVEY A TRACT OF LAND AT PRIVATE SALE TO THE SCOTLAND COUNTY STADIUM-CIVIC CENTER, INC.

The General Assembly of North Carolina enacts:

Section 1. Notwithstanding G.S. 153A-176 and Article 12 of Chapter 160A of the General Statutes, Scotland County may convey to the Scotland County Stadium-Civic Center, Inc., at private sale, with or without monetary consideration, any or all of its right, title, and interest to approximately 30 acres, more or less of the property it owns at the intersection of West Boulevard and Turnpike Road.

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 9th day of April, 1987.

H.B. 240

CHAPTER 58

AN ACT TO MAKE PERMANENT THE EXEMPTION FOR THE TYRRELL COUNTY BOARDS OF EDUCATION AND COUNTY COMMISSIONERS TO ENTER INTO CERTAIN CONTRACTS WITHOUT COMPLYING WITH CHAPTER 133 AND ARTICLE 8 OF CHAPTER 143 OF THE GENERAL STATUTES.

The General Assembly of North Carolina enacts:

Section 1. Section 2 of Chapter 208, Session Laws of 1983, as amended by Section 1 of Chapter 120, Session Laws of 1985, is amended by deleting ", but shall expire June 30, 1988".

Sec. 2. Section 2 of Chapter 580, Session Laws of 1983, as amended by Section 2 of Chapter 120, Session Laws of 1985, is amended by deleting ", but shall expire June 30, 1988".

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 9th day of April, 1987.

H.B. 251

CHAPTER 59

AN ACT TO REPEAL THE FAYETTEVILLE BOXING AND WRESTLING COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. Article 3 of Chapter VIII of the Charter of the City of Fayetteville, being Chapter 557, Session Laws of 1979, is repealed.

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 9th day of April, 1987.

S.B. 11

CHAPTER 60

AN ACT TO CLARIFY PROCEDURES FOR IMPLEMENTING
INCOME WITHHOLDING PURSUANT TO A SUPPORTING
PARTY'S REQUEST.

The General Assembly of North Carolina enacts:

Section 1. G.S. 110-136.5 is amended by rewriting subsections (a) and (b) to read:

"(a) Withholding based on arrearage. Notwithstanding any other provision of law, when an obligor is delinquent in an amount equal to the support payable for one month, the obligee may apply to the court, by motion or in an independent action, for an order for income withholding.

- (1) The motion or complaint shall be verified and state, to the extent known:
 - a. that the obligor is under a court order to provide child support, and information sufficient to identify the order;
 - b. that the obligor is delinquent in an amount equal to the support payable for one month;
 - c. the amount of overdue support and the total amount sought to be withheld;
 - d. the name of each child for whose benefit support is due; and
 - e. the name, location, and mailing address of the payor or payors from whom withholding is sought and the amount of the obligor's monthly disposable income from each payor.
- (2) The motion or complaint shall include or be accompanied by a notice to the obligor, stating:
 - a. that withholding, if implemented, will apply to the obligor's current payors and all subsequent payors; and
 - b. that withholding, if implemented, will be continued until terminated pursuant to G.S. 110-136.10.

At any time the parties may agree to income withholding by consent order.

(b) Withholding based on obligor's request. The obligor may request at any time that income withholding be implemented. The

request may be made either verbally in open court or by written request.

- (1) A written request for withholding shall state:
 - a. that the obligor is under a court order to provide child support, and information sufficient to identify the order;
 - b. whether the obligor is delinquent and the amount of any overdue support;
 - c. the name of each child for whose benefit support is payable;
 - d. the name, location, and mailing address of the payor or payors from whom the obligor receives disposable income and the amount of the obligor's monthly disposable income from each payor;
 - e. that the obligor understands that withholding, if implemented, will apply to the obligor's current payors and all subsequent payors and will be continued until terminated pursuant to G.S. 110-136.10; and
 - f. that the obligor understands that the amount withheld will include an amount sufficient to pay current child support, an additional amount toward liquidation of any arrearages, and a two dollar (\$2.00) processing fee to be retained by the employer for each withholding, but that the total amount withheld may not exceed the following percent of disposable income: forty percent (40%) if there is only one order for withholding;
forty-five percent (45%) if there is more than one order for withholding and the obligor is supporting other dependent children or his or her spouse; or
fifty percent (50%) if there is more than one order for withholding and the obligor is not supporting other dependent children or a spouse.
- (2) A written request for withholding shall be filed in the office of the clerk of superior court to which the obligor is directed to make child support payments. If the request states and the clerk verifies that the obligor is not delinquent, the court may enter an order for withholding without further notice or hearing. If the request states or the clerk finds that the obligor is delinquent, the matter shall be scheduled for hearing unless the obligor in writing waives his right to a hearing and consents to the entry of an order for withholding of an amount the court determines to be appropriate. The court may require a

hearing in any case. Notice of any hearing under this subdivision shall be sent to the obligee."

Sec. 2. This act shall become effective October 1, 1987.

In the General Assembly read three times and ratified this the 10th day of April, 1987.

S.B. 68

CHAPTER 61

AN ACT TO CHANGE THE SENATE MEMBERSHIP OF THE COMMITTEE ON EMPLOYEE HOSPITAL AND MEDICAL BENEFITS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 135-38(a)(4) is repealed.

Sec. 2. G.S. 135-38(a)(6) is rewritten to read:

"(6) Two other members of the Senate appointed by the President of the Senate;"

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 10th day of April, 1987.

S.B. 77

CHAPTER 62

AN ACT TO AMEND CHAPTER 557 OF THE 1985 SESSION LAWS RELATING TO WINSTON-SALEM UPTOWN DEVELOPMENT PROJECTS.

The General Assembly of North Carolina enacts:

Section 1. Sec. 2 of Chapter 557 of the 1985 Session Laws is amended by rewriting the second sentence to read as follows:

"This act shall expire July 1, 1995."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 10th day of April, 1987.

S.B. 171

CHAPTER 63

AN ACT TO ALLOW THE TOWN MANAGER OF APEX TO APPOINT THE TOWN CLERK.

The General Assembly of North Carolina enacts:

Section 1. Section 4.4 of the Charter of the Town of Apex, being Chapter 356, Session Laws of 1985, reads as rewritten:

"Sec. 4.4. Town Clerk. ~~The Board of Commissioners—Town Manager~~ shall appoint a Town Clerk to keep a journal of the proceedings of the Board of Commissioners, to maintain in a safe place all records and documents pertaining to the affairs of the Town, and to perform such other duties as may be required by law or as the ~~Board of Commissioners may direct~~ Town Manager directs."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 10th day of April, 1987.

S.B. 187

CHAPTER 64

AN ACT TO AMEND THE CHARTER OF THE CITY OF LEXINGTON TO CHANGE THE ELECTION SYSTEM.

The General Assembly of North Carolina enacts:

Section 1. Section 1 of Chapter 906, Session Laws of 1981, as amended, containing the Charter of the City of Lexington, is further amended as follows:

(1) Section 1.2 of the Charter is amended by adding the following sentence at the end:

"The City Council may modify the form of government in accordance with the provisions of Chapter 160A of the General Statutes, Article 5, Part 4."

(2) A new Section 1.4 of the Charter is added, following Section 1.3, to read:

"Sec. 1.4. Electoral wards. Until modified in accordance with law, the City shall be divided into six electoral wards, numbered one through six in a clockwise direction. The boundaries of the electoral wards shall be established by ordinance, which may adopt by inclusion or by reference the map labeled 'City Voting Wards 1986' or a similar map. In the initial adoption of the ordinance, the Council need not follow the procedural requirements of Chapter 160A of the General Statutes, Article 5, Part 4, and no public hearing shall be required. The map shall be maintained and may be modified from time to time in accordance with the provisions of Articles 4 and 4A, Chapter 160A of the General Statutes."

(3) Section 2.3 of the Charter is rewritten to read:

"Sec. 2.3. City Council; terms of office. The City Council shall be composed of eight members. The qualified voters of each electoral ward shall elect one Council member, who must reside in that electoral ward, for a total of six. All the qualified voters of the City shall elect two Council members, who may reside anywhere in the City. Each Council member shall be elected for a term of four years, after implementation of staggered terms, as provided in Article III."

(4) Article III of the Charter is rewritten to read:

"ARTICLE III. ELECTIONS.

"Sec. 3.1. Regular municipal elections; conduct. Regular municipal elections shall be held in the City every two years in odd-numbered years, and shall be conducted in accordance with the uniform municipal election laws of North Carolina. The Mayor and members of the Council shall be elected according to the non-partisan plurality method, as provided by G.S. 163-292.

"Sec. 3.2. Election of the Mayor. In every regular municipal election there shall be elected a Mayor to serve a term of two years. The Mayor shall be elected by all the qualified voters of the City.

"Sec. 3.3. Election of Council members. In the regular municipal election in 1987 and every four years thereafter, there shall be elected one Council member by the qualified voters of Ward 5, one by the qualified voters of Ward 6, and two by all the qualified voters of the City, for terms of four years. In the regular municipal election in 1987, there shall be elected one Council member by the qualified voters of Ward 1, one by the qualified voters of Ward 2, one by the qualified voters of Ward 3, and one by the qualified voters of Ward 4, for terms of two years, in order to implement staggered terms. In the regular municipal election in 1989 and every four years thereafter, there shall be elected one Council member by the qualified voters of Ward 1, one by the qualified voters of Ward 2, one by the qualified voters of Ward 3, and one by the qualified voters of Ward 4, for terms of four years."

(5) Paragraph 1 of Sec. 7.2 of the Charter is rewritten to read:

"1. Creation; composition; terms.

A. A commission to be known as the Lexington Utilities Commission is established. The Commission shall be composed of eight members. Six members shall be residents of the respective electoral wards and two at-large members may reside anywhere in the city. Appointments for all eight seats on the Commission shall be made at the first regular meeting of the City Council in December 1987, or as soon thereafter as possible. Appointments for the two at-large seats and for Ward 1 shall be for terms of three years. Appointments for Wards 2, 3 and 4 shall be for terms of two years. Appointments for Wards 5 and 6 shall be for terms of one year. All appointments made thereafter as terms expire shall be for terms of three years. No person shall be eligible for reappointment who has previously served two consecutive three-year terms, until one year after the expiration of the last term served.

B. Terms shall expire at the first regular meeting of the City Council in December of each respective year. As the term of each of the members of the Commission expires, a successor shall be

appointed by the City Council as provided in Part A of this section for a term of three years. The City Council shall fill vacancies on the Commission occurring otherwise than by expiration of term, by appointment for the remainder of the unexpired term. All appointments shall be by majority vote of the membership of the City Council.

C. If a member of the Utilities Commission establishes a residence outside of the City or outside of the electoral ward from and for which he was appointed, then this shall be grounds for removal as a member of the Utilities Commission by action of the City Council."

Sec. 2. The Mayor and each Council member serving on the date of ratification of this act may continue to serve until their successors are elected in the regular municipal election in 1987 and qualified. The members of the Lexington Utilities Commission serving on the date of ratification of this act may continue to serve until all of the new members are appointed by the Council, and all of the newly appointed members shall take office at the same time.

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 10th day of April, 1987.

S.B. 210

CHAPTER 65**AN ACT TO CLARIFY THE SELECTION OF THE ADMINISTRATOR.**

The General Assembly of North Carolina enacts:

Section 1. G.S. 58-241.6 is amended by rewriting the seventh sentence contained in the second paragraph thereof to read:

"Thereafter, the Burial Association Administrator shall be selected solely by, and be responsible to, the Burial Association Commission."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 10th day of April, 1987.

H.B. 227

CHAPTER 66**AN ACT TO RESTATE THE CORPORATE BOUNDARIES OF THE TOWN OF DUBLIN.**

The General Assembly of North Carolina enacts:

Section 1. Section 2 of Chapter 509, Session Laws of 1951 is rewritten to read:

"Sec. 2. Until changed in accordance with law, the corporate boundaries of the Town of Dublin are:

BEGINNING at a point marked by an iron rod located in the centerline of North Carolina State Highway #87, said point of beginning being the beginning point of the corporate limits of the Town of Dublin as described in Section 2 of Chapter 509, Private Laws, Session of 1951 of the General Assembly of North Carolina, said point of beginning also being located South 53 degrees 09 minutes 49 seconds East 3500.00 feet along the centerline of North Carolina State Highway #87 from the point where the Gaston King ditch, if extended, would intersect with the centerline of said highway, and said point of beginning also having N.C. Grid Coordinates: N=327746.7934 and E=2086255.007; THENCE FROM SAID POINT OF BEGINNING South 36 degrees 50 minutes 11 seconds West 358.91 feet to a point marked by an iron rod located in the centerline of North Carolina State Road #1108; thence South 36 degrees 50 minutes 11 seconds West 384.09 feet to a point marked by a concrete monument; thence North 53 degrees 9 minutes 49 seconds West 3067.44 feet to a point marked by an iron rod located within the right-of-way of North Carolina State Road #1003; thence South 46 degrees 11 minutes 22 seconds West 629.39 feet to a point marked by an iron rod; thence North 41 degrees 47 minutes 18 seconds West 676.75 feet to a point marked by an iron rod; thence South 46 degrees 11 minutes 22 seconds West 236.24 feet to a point marked by an iron rod; thence North 41 degrees 07 minutes 59 seconds West 576.67 feet to a point marked by an iron rod; thence South 67 degrees 53 minutes 23 seconds West 724.15 feet to a point marked by an old iron pipe; thence North 43 degrees 38 minutes 37 seconds West 217.02 feet to a point marked by a nail located in the centerline of North Carolina State Highway #410; thence North 44 degrees 55 minutes 15 seconds West 535.94 feet to a point marked by an iron rod located on the northwestern line of First Street; thence North 36 degrees 54 minutes 31 seconds East 1136.70 feet with the northwestern line of First Street to a point marked by an iron pipe located within the right-of-way of North Carolina State Road #1106; thence North 09 degrees 35 minutes 22 seconds East 1964.41 feet to a point marked by an old iron pipe; thence North 80 degrees 54 minutes 27 seconds East 168.47 feet to a point marked by a concrete monument located on the western right-of-way line of North Carolina State Highway #87; thence North 80 degrees 54 minutes 27 seconds East 51.31 feet to a point marked by an iron rod located in the centerline of North Carolina State Highway #87; thence North 84 degrees 35 minutes 41 seconds East 51.31 feet to a point marked by a concrete monument located on the eastern right-of-way line of North Carolina State Highway #87; thence North 84 degrees 35 minutes 41 seconds East

1272.20 feet to a point marked by an iron rod located in the centerline of North Carolina State Road #1339; thence North 84 degrees 35 minutes 41 seconds East 200.30 feet to a point marked by a concrete monument; thence South 6 degrees 19 minutes 11 seconds West 1990.00 feet to a point marked by an iron rod; thence South 53 degrees 09 minutes 49 seconds East 4160.00 feet to a point marked by a concrete monument; thence South 36 degrees 50 minutes 11 seconds West 450.00 feet to a point marked by a concrete monument located on the northeastern right-of-way line of North Carolina State Highway #87; thence South 36 degrees 50 minutes 11 seconds West 50.00 feet to the point of beginning."

Sec. 2. This act shall become effective June 30, 1987.

In the General Assembly read three times and ratified this the 10th day of April, 1987.

H.B. 253

CHAPTER 67

AN ACT CONCERNING VOLUNTARY SATELLITE ANNEXATIONS BY THE TOWN OF KENLY.

The General Assembly of North Carolina enacts:

Section 1. G.S. 160A-58.1(b)(5) does not apply to the Town of Kenly in Johnston County.

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 10th day of April, 1987.

H.B. 258

CHAPTER 68

AN ACT TO ALLOW THE TOWN OF WENDELL TO IMPOSE WATER AND WASTEWATER CAPACITY CHARGES.

Whereas, rapid growth through the influx of new residents and new construction impose on the Town of Wendell increased capital costs necessary to insure that adequate capacities of treated water and wastewater for the customers of the Town of Wendell's system are protected and made available to the users of the town's facilities; and

Whereas, it is the purpose of this act to better enable the Town of Wendell to accommodate orderly growth and development within its corporate limits and extraterritorial jurisdiction by providing it with new methods of regulating development to meet increased demands for the protection, upgrading and future expansion of its water treatment facilities and wastewater treatment facilities; and

Whereas, it is the further purpose of this act to place an equitable share of the costs of protecting, upgrading, expanding and adding to the present water and wastewater treatment facilities on all new and expanded users of such facilities; and

Whereas, it is the intent of the General Assembly that the costs of protecting, upgrading, expanding and adding to the present water and wastewater treatment facilities be borne in part by those requiring new or increased capacities from such facilities, rather than placing the brunt of those costs on existing users of the facilities; Now, therefore,

The General Assembly of North Carolina enacts:

Section 1. Definitions. The following definitions apply to this act, unless the context clearly requires otherwise:

(1) "Capital costs" means costs spent for protecting, upgrading, expanding and/or developing new water treatment facilities and/or wastewater treatment facilities intended to serve the customers of the Town of Wendell's water and/or wastewater treatment system.

(2) "Developer" means an individual, corporation, partnership, organization, association, firm, political subdivision, or other legal entity constructing or creating new construction.

(3) "New construction" means any new development, construction, or installation that results in the use of the Town of Wendell's water treatment facilities or wastewater treatment facilities and includes current users of that system that require additional capacity from said water or wastewater treatment facilities.

(4) "Capacity charge" means the charge imposed upon new construction as defined herein pursuant to the grant of regulatory authority contained herein.

Sec. 2. Subject to the conditions hereinafter set forth, a town may adopt an ordinance or ordinances imposing and collecting a regulatory fee defined herein as a "capacity charge" on all new construction.

Sec. 3. The amount of each "capacity charge" imposed and collected shall be based upon reasonable and uniform consideration of capital costs ultimately to be incurred by the town as a result of the new construction. The "capacity charge" must bear a direct relationship to the additional or expanded capital costs incurred or ultimately to be incurred for the protecting, upgrading, expanding or developing of new water or wastewater treatment facilities to serve the town.

Sec. 4. The amount of each "capacity charge" shall be based on qualified needs and specific classifications and rates, which shall be uniformly applied to all members of a class; however, the town may

vary the charges according to classes of service and may adopt different schedules of charges to be imposed upon new construction within the town limits versus new construction outside of the town limits.

Sec. 5. Before adopting or amending any "capacity charge" ordinance authorized by this act, the town governing board shall hold a public hearing on it. A notice of the public hearing shall be given so as to conform with G.S. 160A-364, as it may be amended from time to time. No "capacity charge" ordinance shall be adopted or amended without first giving the planning board a reasonable opportunity to make comments and recommendations to the town governing board.

Sec. 6. Monies collected as "capacity charges" shall be placed in a separate trust fund. All such revenues shall be spent for the capital facilities for which they were collected.

Sec. 7. A cause of action as to the validity of any "capacity charge" adopted under this act shall be brought within 90 days after its assessment.

Sec. 8. The town is authorized to enact ordinances, resolutions, rules and regulations that are necessary or expedient to carry this act into execution and effect.

Sec. 9. The powers conferred in this act shall be supplementary to all other powers and procedures authorized by any other general or local law. Assessments, charges, fees, or rates authorized by any other general or local law are not affected by this act.

Sec. 10. This act applies to the Town of Wendell only.

Sec. 11. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 10th day of April, 1987.

H.B. 287

CHAPTER 69

AN ACT REGARDING THE COMMISSIONER OF MOTOR VEHICLES' AUTHORITY TO REGULATE DRIVER TRAINING SCHOOLS.

The General Assembly of North Carolina enacts:

Section 1. The second sentence of G.S. 20-321(a) is rewritten to read:

"The Commissioner or his authorized representative shall have the duty of examining applicants for commercial driver training schools and instructor's licenses, licensing successful applicants, and inspecting school facilities, records, and equipment."

Sec 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 10th day of April, 1987.

S.B. 170

CHAPTER 70

AN ACT TO GRANT ADDITIONAL EMINENT DOMAIN POWERS TO THE TOWN OF APEX FOR WATER AND SEWER LINES AND WATER AND SEWER TREATMENT FACILITIES.

The General Assembly of North Carolina enacts:

Section 1. The Charter of the Town of Apex, being Chapter 356, Session Laws of 1985, is amended by adding a new section to read:

"Sec. 6.5. Additional Eminent Domain Powers. Notwithstanding the provisions of G.S. 40A-1, in the exercise of its authority of eminent domain for the acquisition of property to be used for water lines and treatment facilities and sewer lines and treatment facilities, the town may use the procedure and authority prescribed in Article 9 of Chapter 136 of the General Statutes of North Carolina, as now or hereafter amended; provided further, that whenever therein the words 'Secretary' or 'Secretary of Transportation' appear, they shall be deemed to include the 'Town Manager'; provided further that nothing herein shall be construed to enlarge the power of the town to condemn property already devoted to public use."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 14th day of April, 1987.

S.B. 292

CHAPTER 71

AN ACT TO CREATE THE STATE BUILDING COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. Chapter 143 of the General Statutes is amended by adding a new Article to read:

"Article 8B.

"State Building Commission.

"§ 143-135.25. *State Building Commission - creation; staff; membership; appointments; terms; vacancies; chairman; compensation.--*
(a) A State Building Commission is created within the Department of Administration to develop procedures to direct and guide the State's capital facilities development and management program.

(b) The State Construction Office of the Department of Administration shall provide staff to the State Building Commission. The chairman of the Commission shall provide direction to the State Construction Office on its work for the Commission.

The director of the State Construction Office shall be a registered engineer or licensed architect and shall be technically qualified by educational background and professional experience in building design, construction, or facilities management. The administrative head shall be appointed by the Secretary of the Department of Administration.

(c) The Commission shall consist of nine members qualified and appointed as follows:

- (1) A licensed architect whose primary practice is or was in the design of buildings, chosen from among not more than three persons nominated by the North Carolina Chapter of the American Institute of Architects, appointed by the Governor.
- (2) A registered engineer whose primary practice is or was in the design of engineering systems for buildings, chosen from among not more than three persons nominated by the Consulting Engineers Council and the Professional Engineers of North Carolina, appointed by the General Assembly upon the recommendation of the President of the Senate in accordance with G.S. 120-121.
- (3) A licensed building contractor whose primary business is or was in the construction of buildings, chosen from among not more than three persons nominated by the Carolinas Branch, Associated General Contractors, appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121.
- (4) A licensed electrical contractor whose primary business is or was in the installation of electrical systems for buildings, chosen from among not more than three persons nominated by the North Carolina Association of Electrical Contractors, and the Carolinas Chapter, National Electrical Contractors' Association, appointed by the Governor.
- (5) A public member appointed by the General Assembly upon the recommendation of the President of the Senate in accordance with G.S. 120-121.
- (6) A licensed mechanical contractor whose primary business is or was in the installation of mechanical systems for buildings, chosen from among not more than three persons nominated by the North Carolina Association of Plumbing, Heating, Cooling Contractors, appointed by the General

- Assembly upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121.
- (7) An employee of the university system currently involved in the capital facilities development process, chosen from among not more than three persons nominated by the Board of Governors of The University of North Carolina, appointed by the Governor.
 - (8) A public member who is knowledgeable in the building construction or building maintenance area, appointed by the General Assembly upon the recommendation of the President of the Senate in accordance with G.S. 120-121.
 - (9) A manager of physical plant operations whose responsibilities are or were in the operations and maintenance of physical facilities, chosen from among not more than three persons nominated by the North Carolina Association of Physical Plant Administrators, appointed by the General Assembly upon recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121.

The members shall be appointed for staggered three-year terms: The initial appointments to the Commission shall be made within 15 days of the effective date of this act. The initial terms of members appointed pursuant to subdivisions (1), (2), and (3) shall expire June 30, 1990; the initial terms of members appointed pursuant to (4), (5), and (6) shall expire June 30, 1989; and the initial terms of members appointed pursuant to (7), (8), and (9) shall expire June 30, 1988. Members may serve no more than six consecutive years.

Vacancies in appointments made by the Governor shall be filled by the Governor for the remainder of the unexpired terms. Vacancies in appointments made by the General Assembly shall be filled in accordance with G.S. 120-122. Persons appointed to fill vacancies shall qualify in the same manner as persons appointed for full terms.

The chairman of the Commission shall be elected by the Commission. The Secretary of State shall serve as chairman until a chairman is elected.

(d) The Commission shall meet at least four times a year on or about January 15, April 15, July 15, and October 15. The Commission shall also meet upon the call of the chairman, or upon call of at least five members. The Secretary of State shall call the first meeting within 30 days of the effective date of this act; the first order of business at the first meeting shall be the election of a chairman by the Commission.

(e) Members of the Commission who are not State officers or employees shall receive per diem of one hundred dollars (\$100.00) a day when the Commission meets and shall be reimbursed for travel and subsistence as provided in G.S. 138-5. Members who are State officers or employees shall be reimbursed for travel and subsistence as provided in G.S. 138-6.

"§ 143-135.26. *Powers and duties of the Commission.*--The State Building Commission shall have the following powers and duties with regard to the State's capital facilities development and management program:

(1) To adopt rules establishing standard procedures and criteria to assure that the designer selected for each State capital improvement project has the qualifications and experience necessary for that capital improvement project. The rules shall provide that the State Building Commission, after consulting with the funded agency, is responsible and accountable for the final selection of the designer except when The University of North Carolina is the funded agency. When The University is the funded agency, it is responsible and accountable for the final selection of the designer. All designers shall be selected within 60 days of the date funds are appropriated for a project by the General Assembly.

The State Building Commission shall submit a written report to the Joint Legislative Commission on Governmental Operations on the Commission's selection of a designer for a project within 30 days of selecting the designer.

(2) To adopt rules for coordinating the plan review, approval, and permit process for State capital improvement projects.

(3) To adopt rules for establishing a post-occupancy evaluation, annual inspection and preventive maintenance program for all State buildings.

(4) To develop procedures for evaluating the work performed by designers and contractors on State capital improvement projects.

(5) To continuously study and recommend ways to improve the effectiveness and efficiency of the State's capital facilities development and management program.

(6) To request designers selected prior to the effective date of this act whose plans for the projects have not been approved to report to the Commission on their progress on the projects. The Department of Administration shall provide the Commission with a list of all such projects.

(7) To appoint an advisory board, if the Commission deems it necessary, to assist the Commission in its work. No one other than the Commission may appoint an advisory board to assist or advise it in its work.

The Commission shall submit an annual report of its activities to the Governor and the Joint Legislative Commission on Governmental Operations.

"§ 143-135.27. *Definition of capital improvement project.*--As used in this Article, 'State capital improvement project' means the construction of and any alteration, renovation, or addition to State buildings, as defined in G.S. 143-336, for which State funds, as defined in G.S. 143-1, are used and which is required by G.S. 143-129 to be publicly advertised.

"§ 143-135.28. *Conflict of interest.*--If any member of the Commission shall be interested either directly or indirectly, or shall be an officer or employee of or have an ownership interest in any firm or corporation interested directly or indirectly, in any contract authorized by the Commission, that interest shall be disclosed to the Commission and set forth in the minutes of the Commission, and the member having the interest may not participate on behalf of the Commission in the authorization of that contract."

Sec. 2. Article 7 of Chapter 129 of the General Statutes is repealed.

Sec. 3. G.S. 143-18.1(c) is amended by deleting the language "and the Capital Building Authority" both times it appears.

Sec. 4. G.S. 120-123(39) and (12) are repealed.

Sec. 5. G.S. 120-123 is amended by adding a new subdivision to read:

"(46) The State Building Commission, as established by G.S. 143-135.25."

Sec. 6. Funds appropriated to the State-Owned Property Study Commission for the 1985-87 fiscal biennium that are not expended by the effective date of this act are transferred to the State Building Commission created in Section 1 of this act. No additional funds may be paid out for activities of the State Building Commission during the 1985-87 fiscal biennium unless the payment is authorized in the Current Operations Appropriations Act for the 1987-89 fiscal biennium.

Sec. 7. The State Building Commission created in Executive Order Number 42, done March 23, 1987, is abolished.

Sec. 8. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 14th day of April, 1987.

H.B. 150

CHAPTER 72

AN ACT TO REQUIRE PERSONS HUNTING BIG GAME TO
DISPLAY ON THEIR PERSON A MINIMUM AMOUNT OF
HUNTER ORANGE.*The General Assembly of North Carolina enacts:*

Section 1. Chapter 113 of the General Statutes is amended by adding a new section to read:

"§ 113-291.8. *Requirement to display hunter orange.*--(a) Any person hunting bear, deer, or wild boar, with the use of firearms, must wear a cap or hat on his head made of hunter orange material or an outer garment of hunter orange visible from all sides. Hunter orange material is a material that is a daylight fluorescent orange color.

This section does not apply to a landholder, his spouse, or children, who are hunting on land held by the landholder.

(b) Any person violating this section during the 1987 big game hunting season shall be given a warning of violation only. Thereafter, any person violating this section has committed an infraction and shall pay a fine of twenty-five dollars (\$25.00). An infraction is an unlawful act that is not a crime. The procedure for charging and trying an infraction is the same as for a misdemeanor, but conviction of an infraction has no consequence other than payment of a fine. A person convicted of an infraction may not be assessed court costs.

Wildlife Enforcement Officers are authorized to charge persons with the infraction created by this section.

(c) Failure to wear hunter orange material in violation of this section shall not constitute negligence per se or contributory negligence per se."

Sec. 2. This act shall become effective October 1, 1987.

In the General Assembly read three times and ratified this the 14th day of April, 1987.

S.B. 55

CHAPTER 73

AN ACT TO LIMIT INTERROGATORIES TO 50 WITHOUT
PRIOR COURT APPROVAL.*The General Assembly of North Carolina enacts:*

Section 1. G.S. 1A-1, Rule 33. Interrogatories to parties, is amended in subsection (a) by adding a new paragraph, immediately after the first paragraph, to read:

"A party may direct no more than 50 interrogatories, in one or more sets, to any other party, except upon leave granted by the Court for good cause shown or by agreement of the other party. Interrogatory parts and subparts shall be counted as separate interrogatories for purposes of this rule."

Sec. 2. This act shall become effective October 1, 1987 and apply to any action filed on or after October 1, 1987.

In the General Assembly read three times and ratified this the 15th day of April, 1987.

H.B. 301

CHAPTER 74

AN ACT TO CLARIFY THE CORPORATE LIMITS OF THE TOWN OF VANDEMERE IN PAMLICO COUNTY.

The General Assembly of North Carolina enacts:

Section 1. Section 2 of Chapter 311, Private Laws of 1895 is rewritten to read:

"Section 2. That the corporate limits of the town, until modified in accordance with law, shall include the following area: Beginning at a Point at the mouth of Turpentine Gut on the bank of Vandemere Creek; thence S 56 degrees 40 minutes W 1593.0 feet; S 56 degrees 47 minutes W 260'; S 56 degrees 28 minutes W 510.0 feet; S 57 degrees 58 minutes W with a canal 880'; S 58 degrees 16 minutes W with a canal and then crossing Robbins Road 2007.17 feet; thence with a ditch S 26 degrees 27 minutes W 1094.02 feet to the center line of N. C. Highway 307 (aka Pennsylvania Avenue); thence N 63 degrees 26 minutes W 176.13 feet along the centerline of N.C. Highway 307; thence S 29 degrees 37 minutes W 275.08 feet with a ditch; thence S 55 degrees 29 minutes W 1550.47 feet with a ditch; thence S 43 degrees 34 minutes W 448.25 feet with a canal; thence S 70 degrees 14 minutes W 239.11 feet with a canal to an unnamed gut, which is a prong of Smith Creek; thence down the gut to Smith Creek; thence down Smith Creek to Bay River; thence down Bay River to Vandemere Creek; thence up Vandemere Creek to the Beginning."

Sec. 2. Immediately upon ratification of this act, the Town Clerk shall cause an accurate map of the corporate limits to be filed in the offices of the Secretary of State, the Pamlico County Register of Deeds and the Pamlico County Board of Elections. The Town Clerk shall cause to be placed on the face of the map the following certification, dated and signed by the Clerk, with the blanks filled in as appropriate: "The corporate limits of the Town of Vandemere shown in this map are as established by act of the North Carolina General Assembly ratified on the _____ day of _____, 1987, as

Chapter _____, Session Laws of 1987." Immediately upon any subsequent alterations of the corporate limits, the appropriate filings of maps and ordinances shall be made, as required by general law.

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 17th day of April, 1987.

H.B. 272

CHAPTER 75

AN ACT TO REMOVE THE LIMITATION ON THE LENGTH OF STREETS THE TOWN OF TROUTMAN MAY MAKE IMPROVEMENTS ON AND ASSESS FOR THE COSTS WITHOUT PETITION.

The General Assembly of North Carolina enacts:

Section 1. Section 9.2 of the Charter of the Town of Troutman, being Chapter 144, Session Laws of 1981, reads as rewritten:

"Sec. 9.2. *When petition unnecessary.* The Board of Aldermen may order street improvements and assess the cost thereof, exclusive of the costs incurred at street intersections against the abutting property owners, according to one or more of the assessment bases set forth in Article 10 of Chapter 160A of the North Carolina General Statutes, without the necessity of a petition, upon the finding by the Board as a fact:

(a) ~~That the street improvement project does not exceed 1,200 linear feet, and~~

(b) That such street or part thereof is unsafe for vehicular traffic and it is in the public interest to make such improvement, or

(c) That it is in the public interest to connect two streets, or portions of a street already improved, or

(d) That it is in the public interest to widen a street, or part thereof, which is already improved; provided, that assessments for widening any street or portion of street without a petition shall be limited to the cost of widening and otherwise improving such street in accordance with the street classification and improvement standards established by the Town's thoroughfare or major street plan for the particular street or part thereof to be widened and improved under the authority granted by this Article."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 17th day of April, 1987.

S.B. 93

CHAPTER 76

AN ACT TO PERMIT PERSONS TO ENGAGE IN BUSINESS AS PAWNBROKERS IN UNINCORPORATED AREAS OF IREDELL COUNTY.

The General Assembly of North Carolina enacts:

Section 1. The last sentence of Section 4 of Chapter 1155 of the 1957 Session Laws, as amended by Chapters 169, 382, and 968 of the 1983 Session Laws and Chapter 48 of the 1985 Session Laws, is rewritten to read:

"Sections 1 and 2 of this act also apply to Alleghany, Dare, Harnett, Iredell, Jackson, Lenoir, and Pitt Counties."

Sec. 2. Section 3 of Chapter 169 of the 1983 Session Laws, as amended by Chapters 382 and 968 of the 1983 Session Laws and Chapter 48 of the 1985 Session Laws, is rewritten to read:

"Sec. 3. This act applies to Alleghany, Dare, Harnett, Iredell, Jackson, Lenoir, and Pitt Counties only."

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 17th day of April, 1987.

H.B.130

CHAPTER 77

AN ACT TO MAKE TECHNICAL AMENDMENTS TO THE POWER OF ATTORNEY STATUTES AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 32A-2(5) is amended at the end thereof by adding the following: "as lessee or owner".

Sec. 2. G.S. 32A-9(c) is amended by deleting the words: "and then in effect".

Sec. 3. This act is effective October 1, 1987.

In the General Assembly read three times and ratified this the 21st day of April, 1987.

H.B. 131

CHAPTER 78

AN ACT TO REPEAL CERTAIN INCONSISTENT STATUTES AND TO CLARIFY OTHER STATUTES REGARDING THE TESTIMONY OF WITNESSES TO PROVE THE PROPER EXECUTION OF AN ATTESTED WILL AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 31-23, G.S. 31-25, and G.S. 31-25.1 are hereby repealed.

Sec. 2. G.S. 31-24 is hereby rewritten to read as follows:

"§ 31-24. *Examination of witnesses by affidavit.*--(a) The examination of witnesses to a will may be taken and subscribed in the form of an affidavit before a notary public or other person who is authorized to administer oaths in the jurisdiction where the examination is held.

(b) A photographic copy of the original will certified to be a true and exact copy thereof by the clerk of superior court of the county in which the will is to be probated may be used in the examination of the witnesses in the procedures set out in subsection (a); provided, the said clerk has in his possession the original will at the time of examination of the witnesses.

(c) Affidavits taken in accordance with subsection (a) shall be transmitted by the person taking the affidavit to the clerk of superior court of the county in which the will is to be probated.

(d) Testimony submitted in accordance with subsection (a) is competent in regard to all requirements of G.S. 31-3.3 and to establish that a will was executed in compliance with the requirements of G.S. 31-3.3.

(e) Nothing in this section is to limit or otherwise affect the authority of a clerk of superior court in the exercise of his authority as judge of probate under G.S. 28A-2-1 to:

(1) issue subpoenas under G.S. 7A-103; or

(2) order the taking of depositions of witnesses."

Sec. 3. G.S. 31-27 is hereby rewritten to read as follows:

"§ 31-27. *Certified copy of will of nonresident recorded.*--(a) Subject to the provisions of subsection (b), if the will of a citizen or subject of another state or country is probated in accordance with the laws of that jurisdiction and a duly certified copy of the will and the probate proceedings are produced before a clerk of superior court of any county wherein the testator had property, the copy of the will shall be probated as if it were the original. If the jurisdiction is within the United States, the copy of the will and the probate proceedings shall be certified by the clerk of the court wherein the will was probated. If the jurisdiction is outside the United States, the copy of the will and probate proceedings shall be certified by any ambassador, minister, consul or commercial agent of the United States under his official seal.

(b) For a copy of a will probated under the provisions of subsection (a) to be valid to pass title to or otherwise dispose of real estate in this State, the execution of said will according to the laws of this State must appear affirmatively, to the satisfaction of the clerk of the superior court of the county in which such will is offered for probate, from the testimony of a witness or witnesses to such will, or from findings of fact or recitals in the order of probate, or otherwise in such certified copy of the will and probate proceedings.

(c) If the execution of the will in accordance with the laws of this State does not appear as required by subsection (b), the clerk before whom the copy is exhibited shall have power to take proof as prescribed in G.S. 31-24, and the will may be adjudged duly proved, and if so proved, the will shall be recorded as herein provided.

(d) Any copy of a will of a nonresident heretofore allowed, filed and recorded in this State in compliance with the foregoing shall be valid to pass title to or otherwise dispose of real estate in this State."

Sec. 4. This act shall become effective October 1, 1987.

In the General Assembly read three times and ratified this the 22nd day of April, 1987.

H.B. 229

CHAPTER 79

AN ACT TO PROVIDE FOR AN INCREASED STATE MINIMUM
WAGE IF THE FEDERAL MINIMUM WAGE INCREASES
BEFORE JUNE 1, 1989.

The General Assembly of North Carolina enacts:

Section 1. G.S. 95-25.3(a) is amended by rewriting the last sentence to read: "If before June 1, 1989, the minimum wage set forth in the Fair Labor Standards Act is increased above three dollars and thirty-five cents (\$3.35) per hour, the minimum wage required under this section shall increase by the same amount, but shall not increase above four dollars (\$4.00) per hour, effective the same date the increase under the Fair Labor Standards Act is effective."

Sec. 2. This act shall become effective July 1, 1987.

In the General Assembly read three times and ratified this the 22nd day of April, 1987.

H.B. 232

CHAPTER 80

AN ACT TO REQUIRE TRAINING OF SPECIAL REGISTRATION COMMISSIONERS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 163-41(b) reads as rewritten:

"(b) Appointment of Special Registration Commissioners. In each county the county board of elections shall appoint as special registration commissioners the persons required by the next paragraph of this subsection, and may appoint additional persons as special registration commissioners. Special registration commissioners shall serve a term to expire on the date on which registrars and judges are appointed pursuant to subsection (a) of this subsection, and may be removed with cause. A special registration commissioner for a county must be a registered voter of that county.

In each county, the county chairman of each of the two political parties having the greatest voter registration in the State may each, from time to time until the maximum number of special registration commissioners allowed by this sentence are appointed, recommend voters who are eligible and who are residents of the county for appointment as special registration commissioners in a number not to exceed:

(1) One per 2,500 (or major fraction) residents of the county according to the most recent decennial federal census; or

(2) Five, whichever is greater, but in no case greater than 100. If such recommendations are received by the county board of elections at least seven days prior to the next meeting of the county board of elections, the county board of elections shall at that meeting appoint as special registration commissioners the qualified persons on each list. The county board of elections shall meet within 45 days of receiving such nominations.

No person shall be eligible to serve as a special registration commissioner, who holds any elective office under the government of the United States, or of the State of North Carolina or any political subdivision thereof.

No person shall be eligible to serve as a special registration commissioner, who serves as chairman of any state, congressional district, county, or precinct political party or political organization.

No person shall be eligible to serve as a special registration commissioner who is a candidate for nomination or election.

No special registration commissioner who is the wife, husband, mother, father, son, daughter, brother or sister of any candidate for nomination or election may serve as special registration commissioner during the period beginning when the person files a notice of candidacy or otherwise obtains ballot access and ending on the date of the primary if the candidate is on the primary ballot or ending on the day of the general election if the candidate is on the general election ballot. The county board of elections shall temporarily disqualify the special registration commissioner for that period and shall have authority to appoint a temporary substitute who is a member of the same political party, to serve until the special registration commissioner is no longer disqualified.

If the commissioner being temporarily replaced was appointed from a list of names which the board of elections was required to appoint one of, then the board of elections must appoint the temporary substitute from a list of two names submitted by the chairman of that political party.

Before being eligible to take the oath of office, each special registration commissioner must receive the same training in registering voters as is required of registrars and judges under G.S. 163-80(d).

Before entering upon his duties each special registration commissioner shall take and subscribe the following oath of office to be administered by an officer authorized to administer oaths and file it with the county board of elections:

'I, _____, do solemnly swear (or affirm) that I will support the Constitution of the United States; that I will be faithful and bear true allegiance to the State of North Carolina, and to the constitutional powers and authorities which are or may be established for the government thereof; that I will endeavor to support, maintain and defend the Constitution of said State, not inconsistent with the Constitution of the United States; that I will administer the duties of my office as special registration commissioner for _____ County without fear or favor, to the best of my knowledge and ability, according to law; so help me, God.'

Sec. 2. This act applies with respect to all special registration commissioners appointed on or after July 1, 1987.

In the General Assembly read three times and ratified this the 22nd day of April, 1987.

H.B. 263

CHAPTER 81

AN ACT TO AMEND THE PRESIDENTIAL PREFERENCE
PRIMARY ACT TO ACCOUNT FOR THE CHANGE IN ITS
DATE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 163-213.4 reads as rewritten:

" § 163-213.4. *Nomination by State Board of Elections.*--The State Board of Elections shall convene in Raleigh on the ~~seventy-fifth (75th) day~~ second Tuesday in December preceding the presidential preference primary election. At the meeting required by this section, the State Board of Elections shall nominate as presidential primary candidates all candidates affiliated with a political party, recognized pursuant to the provisions of Article 9 of Chapter 163 of the General Statutes, who have become eligible to receive payments from the Presidential Primary Matching Payment Account, as provided in section 9033 of the U.S. Internal Revenue Code of 1954, as amended. Immediately upon completion of these requirements, the Board shall release to the news media all such nominees selected. Provided, however, nothing shall prohibit the partial selection of nominees prior to the meeting required by this section, if all provisions herein have been complied with."

Sec. 2. G.S. 163-213.3 reads as rewritten:

" § 163-213.3. *Conduct of election.*--The presidential preference primary election shall be conducted and canvassed by the same authority and in the manner provided by law for the conduct and canvassing of the primary election for the office of Governor and all other offices enumerated in G.S. 163-187 and under the same provisions stipulated in G.S. 163-188, except that the earliest date by which absentee ballots shall be available shall be 35 days prior to the date of the primary. The State Board of Elections shall have authority to promulgate reasonable rules and regulations, not inconsistent with provisions contained herein, pursuant to the administration of this Article."

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 22nd day of April, 1987.

AN ACT TO EXTEND CERTAIN DEADLINES APPLICABLE TO
THE NORTH CAROLINA HAZARDOUS WASTE TREATMENT
COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. G. S. 143B-470.4(b) is amended in the second sentence by deleting the date "April 1, 1987" and substituting "October 1, 1987".

Sec. 2. G. S. 143B-470.4(b) is amended in the sixth sentence by deleting the date "September 1, 1987" and substituting "April 1, 1988".

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 22nd day of April, 1987.

AN ACT TO REQUIRE ADEQUATE DISCLOSURE BY
CONTINUING CARE FACILITIES.

The General Assembly of North Carolina enacts:

Section 1. Chapter 131E of the General Statutes is amended by adding a new Article to read:

"Article 12.

"Disclosure and Contract Requirements for
Continuing Care Facilities.

" § 131E-215. *Definitions.*--As used in this Article, unless otherwise specified:

- (1) 'Continuing care' means the furnishing to an individual other than an individual related by blood, marriage, or adoption to the person furnishing the care, of lodging together with nursing services, medical services, or other health related services, pursuant to an agreement effective for the life of the individual or for a period in excess of one year.
- (2) 'Entrance fee' means a payment that assures a resident a place in a facility for a term of years or for life.
- (3) 'Facility' means the place or places in which a provider undertakes to provide continuing care to an individual.
- (4) 'Health related services' means, at a minimum, nursing home admission or assistance in the activities of daily living, exclusive of the provision of meals or cleaning services.

- (5) 'Living unit' means a room, apartment, cottage, or other area within a facility set aside for the exclusive use or control of one or more identified residents.
- (6) 'Provider' means the promoter, developer, or owner of a continuing care retirement community, whether a natural person, partnership, or other unincorporated association, however organized, trust, or corporation, of an institution, building, residence, or other place, whether operated for profit or not, or any other person, that solicits or undertakes to provide continuing care under a continuing care facility contract.
- (7) 'Resident' means a purchaser of, a nominee of, or a subscriber to, a continuing care contract.

" § 131E-216. *Pre-contractual statements of record.*--No provider may enter into a contract to provide continuing care in a facility if (i) the contract requires or permits the payment of an entrance fee to any person, and (ii) the facility is, or will be, located in this State unless there has been filed in the office of the Division of Facility Services of the Department of Human Resources:

- (1) A current disclosure statement as prescribed by G.S. 131E-217, and
- (2) A copy of the agreement establishing the escrow as prescribed by G.S. 131E-220.

" § 131E-217. *Disclosure statement.*--(a) At the time of, or prior to, the execution of a contract to provide continuing care, or at the time of, or prior to, the transfer of any money or other property to a provider by or on behalf of a prospective resident, whichever occurs first, the provider shall deliver a current disclosure statement to the person with whom the contract is to be entered into, the text of which shall contain at least:

- (1) The name and business address of the provider and a statement of whether the provider is a partnership, corporation, or other type of legal entity.
- (2) The names and business addresses of the officers, directors, trustees, managing or general partners, any person having a ten percent (10%) or greater equity or beneficial interest in the provider, and any person who will be managing the facility on a day-to-day basis, and a description of these persons' interests in or occupations with the provider.
- (3) The following information on all persons named in response to subdivision (2) of this section:

- a. a description of the business experience of this person, if any, in the operation or management of similar facilities;
 - b. the name and address of any professional service, firm, association, trust, partnership, or corporation in which this person has, or which has in this person, a ten percent (10%) or greater interest and which it is presently intended shall currently or in the future provide goods, leases, or services to the facility, or to residents of the facility, of an aggregate value of five hundred dollars (\$500.00) or more within any year, including a description of the goods, leases, or services and the probable or anticipated cost thereof to the facility, provider, or residents or a statement that this cost cannot presently be estimated; and
 - c. a description of any matter in which the person (i) has been convicted of a felony or pleaded *nolo contendere* to a felony charge, or been held liable or enjoined in a civil action by final judgment, if the felony or civil action involved fraud, embezzlement, fraudulent conversion, or misappropriation of property; or (ii) is subject to a currently effective injunctive or restrictive court order, or within the past five years, had any State or federal license or permit suspended or revoked as a result of an action brought by a governmental agency or department, if the order or action arose out of or related to business activity of health care, including actions affecting a license to operate a foster care facility, nursing home, retirement home, home for the aged, or facility subject to this Article or a similar law in another state.
- (4) A statement as to whether the provider is, or is not affiliated with, a religious, charitable, or other nonprofit organization, the extent of the affiliation, if any, the extent to which the affiliate organization will be responsible for the financial and contract obligations of the provider, and the provision of the Federal Internal Revenue Code, if any, under which the provider or affiliate is exempt from the payment of income tax.
- (5) The location and description of the physical property or properties of the facility, existing or proposed, and to the extent proposed, the estimated completion date or dates, whether construction has begun, and the contingencies

- subject to which construction may be deferred.
- (6) The services provided or proposed to be provided pursuant to contracts for continuing care at the facility, including the extent to which medical care is furnished, and a clear statement of which services are included for specified basic fees for continuing care and which services are made available at or by the facility at extra charge.
 - (7) A description of all fees required of residents, including the entrance fee and periodic charges, if any. The description shall include:
 - a. a statement of the fees that will be charged if the resident marries while at the facility, and a statement of the terms concerning the entry of a spouse to the facility and the consequences if the spouse does not meet the requirements for entry;
 - b. the circumstances under which the resident will be permitted to remain in the facility in the event of possible financial difficulties of the resident;
 - c. the terms and conditions under which a contract for continuing care at the facility may be canceled by the provider or by the resident, and the conditions, if any, under which all or any portion of the entrance fee will be refunded in the event of cancellation of the contract by the provider or by the resident or in the event of the death of the resident prior to or following occupancy of a living unit;
 - d. the conditions under which a living unit occupied by a resident may be made available by the facility to a different or new resident other than on the death of the prior resident; and
 - e. the manner by which the provider may adjust periodic charges or other recurring fees and the limitations on these adjustments, if any; and, if the facility is already in operation, or if the provider or manager operates one or more similar continuing care locations within this State, tables shall be included showing the frequency and average dollar amount of each increase in periodic charges, or other recurring fees at each facility or location for the previous five years, or such shorter period as the facility or location may have been operated by the provider or manager.
 - (8) The health and financial conditions required for an individual to be accepted as a resident and to continue as a resident once accepted, including the effect of any change

in the health or financial condition of a person between the date of entering a contract for continuing care and the date of initial occupancy of a living unit by that person.

- (9) The provisions that have been made or will be made, if any, to provide reserve funding or security to enable the provider to perform its obligations fully under contracts to provide continuing care at the facility, including the establishment of escrow accounts, trusts, or reserve funds, together with the manner in which these funds will be invested, and the names and experience of any individuals in the direct employment of the provider who will make the investment decisions.
- (10) Certified financial statements of the provider, including (i) a balance sheet as of the end of the most recent fiscal year and (ii) income statements for the three most recent fiscal years of the provider or such shorter period of time as the provider shall have been in existence. If the provider's fiscal year ended more than 120 days prior to the date the disclosure statement is recorded, interim financial statements as of a date not more than 90 days prior to the date of recording the statement shall be included, but need not be certified.
- (11) A summary of a report of an actuary, updated every five years, that estimates the capacity of the provider to meet its contract obligation to the residents. Disclosure statements of Continuing Care Facilities established prior to January 1, 1988, do not need an actuary report or summary until January 1, 1993.
- (12) If operation of the facility has not yet commenced, a statement of the anticipated source and application of the funds used or to be used in the purchase or construction of the facility, including:
 - a. an estimate of the cost of purchasing or constructing and equipping the facility including such related costs as financing expense, legal expense, land costs, occupancy development costs, and all other similar costs the provider expects to incur or become obligated for prior to the commencement of operations;
 - b. a description of any mortgage loan or other long-term financing intended to be used for the financing of the facility, including the anticipated terms and costs of this financing;

- c. an estimate of the total entrance fees to be received from, or on behalf of, residents at, or prior to, commencement of operation of the facility; and
 - d. an estimate of the funds, if any, that are anticipated to be necessary to fund start-up losses and provide reserve funds to assure full performance of the obligations of the provider under contracts for the provision of continuing care.
- (13) Pro forma annual income statements for the facility for a period of not less than five fiscal years, including:
- a. a beginning cash balance consistent with the certified income statement required by subdivision (10) of this section or, if operation of the facility has not commenced, consistent with the statement of anticipated source and application of funds required by subdivision (12);
 - b. anticipated earnings on cash reserves, if any;
 - c. estimates of net receipts from entrance fees, other than entrance fees included in the statement of source and application of funds required by subdivision (12) less estimated entrance fee refunds, if any, and including a description of the actuarial basis and method of calculation for the projection of entrance fee receipts;
 - d. an estimate of gifts or bequests, if any, that are to be relied on to meet operating expenses;
 - e. a projection of estimated income from fees and charges other than entrance fees, showing individual rates presently anticipated to be charged and including a description of the assumptions used for calculating the estimated occupancy rate of the facility and the effect on the income of the facility of government subsidies for health care services, if any, to be provided pursuant to the contracts for continuing care;
 - f. a projection of estimated operating expenses of the facility, including a description of the assumptions used in calculating the expenses, and separate allowances, if any, for the replacement of equipment and furnishings and anticipated major structural repairs or additions; and
 - g. an estimate of annual payments of principal and interest required by any mortgage loan or other long-term financing arrangement relating to the facility.

(14) The estimated number of residents of the facility to be provided services by the provider pursuant to the contract for continuing care.

(15) Any other material information concerning the facility or the provider as the provider wishes to include.

(b) The cover page of the disclosure statement shall state, in a prominent location and in boldface type, the date of the disclosure statement, the last date through which that disclosure statement may be delivered if not earlier revised, and that the delivery of the disclosure statement to a contracting party before the execution of a contract for the provision of continuing care is required by this Article but that the disclosure statement has not been reviewed or approved by any government agency or representative to ensure accuracy or completeness of the information set out.

(c) A copy of the standard form of contract for continuing care used by the provider shall be attached to each disclosure statement.

" § 131E-218. *Contract for continuing care; specifications.*--(a) Each contract for continuing care shall provide that:

(1) The party contracting with the provider may rescind the contract within 30 days following the later of the execution of the contract or the receipt of a disclosure statement that meets the requirements of this section, in which event any money or property transferred to the provider, other than periodic charges specified in the contract and applicable only to the period a living unit was actually occupied by the resident, shall be returned in full, and the resident to whom the contract pertains is not required to move into the facility before the expiration of the 30 day period; and

(2) If a resident dies before occupying a living unit in the facility, or if, on account of illness, injury, or incapacity, a resident would be precluded from occupying a living unit in the facility under the terms of the contract for continuing care, the contract is automatically canceled and the resident or legal representative of the resident shall receive a refund of all money or property transferred to the provider, less (i) those nonstandard costs specifically incurred by the provider or facility at the request of the resident and described in the contract or an addendum thereto signed by the resident, and (ii) a reasonable service charge, if set out in the contract, not to exceed the greater of one thousand dollars (\$1,000) or two percent (2%) of the entrance fee.

(b) Each contract shall include provisions that specify the following:

- (1) The total consideration to be paid;
- (2) Services to be provided;
- (3) The procedures the provider shall follow to change the resident's accommodation if necessary for the protection of the health or safety of the resident or the general and economic welfare of the residents;
- (4) The policies to be implemented if the resident cannot pay the periodic fees;
- (5) The terms governing the refund of any portion of the entrance fee in the event of discharge by the provider or cancellation by the resident;
- (6) The policy regarding increasing the periodic fees;
- (7) The description of the living quarters;
- (8) Any religious or charitable affiliations of the provider and the extent, if any, to which the affiliate organization will be responsible for the financial and contractual obligations of the provider;
- (9) Any property rights of the resident;
- (10) The policy, if any, regarding fee adjustments if the resident is voluntarily absent from the facility; and
- (11) Any requirement, if any, that the resident apply for Medicaid, public assistance, or any public benefit program.

" § 131E-219. *Annual disclosure statement revision.*--Within the 150 days following the end of each fiscal year, the provider shall have filed in the Division of Facility Services of the Department of Human Resources a revised disclosure statement setting forth current information required pursuant to G.S. 131E-217. The provider shall also make this revised disclosure statement available to all the residents of the facility. This revised disclosure statement shall include a narrative describing any material differences between (i) the pro forma income statements filed in response to G.S. 131E-217 as a part of the disclosure statement recorded most immediately subsequent to the start of the provider's most recently completed fiscal year and (ii) the actual results of operations during that fiscal year together with the revised pro forma income statements being filed as a part of the revised disclosure statement. A provider may also revise its disclosure statement and have the revised disclosure statement recorded at any other time if, in the opinion of the provider, revision is necessary to prevent an otherwise current disclosure statement from containing a material misstatement of fact or omitting a material fact required to be stated therein. Only the most recently recorded disclosure statement,

with respect to a facility, and in any event, only a disclosure statement dated within one year plus 150 days prior to the date of delivery, shall be considered current for purposes of this Article or delivered pursuant to G.S. 131E-217.

"§ 131E-220. *Escrow, collection of deposits.*--(a) A provider shall establish an escrow account with (i) a bank, (ii) a trust company, or (iii) another person or entity agreed upon by the provider and the resident. The terms of this escrow account shall provide that the total amount of any entrance fee received by the provider prior to the date the resident is permitted to occupy a living unit in the facility be placed in this escrow account. These funds may be released only as follows:

- (1) If the entrance fee applies to a living unit that has been previously occupied in the facility, the entrance fee shall be released to the provider when the living unit becomes available for occupancy by the new resident;
- (2) If the entrance fee applies to a living unit which has not previously been occupied by any resident, the entrance fee shall be released to the provider when the escrow agent is satisfied that:
 - a. construction or purchase of the living unit has been completed and an occupancy permit, if applicable, covering the living unit has been issued by the local government having authority to issue such permits;
 - b. a commitment has been received by the provider for any permanent mortgage loan or other long-term financing, and any conditions of the commitment prior to disbursement of funds thereunder have been substantially satisfied; and
 - c. aggregate entrance fees received or receivable by the provider pursuant to binding continuing care retirement community contracts, plus the anticipated proceeds of any first mortgage loan or other long-term financing commitment are equal to not less than ninety percent (90%) of the aggregate cost of constructing or purchasing, equipping and furnishing the facility plus not less than ninety percent (90%) of the funds estimated in the statement of anticipated source and application of funds submitted by the provider as that part of the disclosure statement required by G.S. 131E-217(12)d., to be necessary to fund start-up losses and assure full performance of the obligations of the provider pursuant to continuing care retirement

community contracts.

(b) Upon receipt by the escrow agent of a request by the provider for the release of these escrow funds, the escrow agent shall approve release of the funds within five working days unless the escrow agent finds that the requirements of subsection (a) of this section have not been met and notifies the provider of the basis for this finding. The request for release of the escrow funds shall be accompanied by any documentation the fiduciary requires.

(c) If the provider fails to meet the requirements for release of funds held in this escrow account within a time period the escrow agent considers reasonable, these funds shall be returned by the escrow agent to the persons who have made payment to the provider. The escrow agent shall notify the provider of the length of this time period when the provider requests release of the funds.

(d) An entrance fee held in escrow may be returned by the escrow agent to the person who made payment to the provider at any time upon receipt by the escrow agent of notice from the provider that this person is entitled to a refund of the entrance fee.

" § 131E-221. *Civil liability.*--A provider who enters into a contract for continuing care at a facility without having first delivered a disclosure statement meeting the requirements of G.S. 131E-217 to the person contracting for this continuing care, or enters into a contract for continuing care at a facility with a person who has relied on a disclosure statement that omits to state a material fact required to be stated therein or necessary in order to make the statements made therein, in light of the circumstances under which they are made, not misleading, shall be liable to the person contracting for this continuing care for actual damages and repayment of all fees paid to the provider, facility, or person violating this Article, less the reasonable value of care and lodging provided to the resident by or on whose behalf the contract for continuing care was entered into prior to discovery of the violation, misstatement, or omission or the time the violation, misstatement, or omission should reasonably have been discovered, together with interest thereon at the legal rate for judgments, and court costs and reasonable attorney fees.

(a) Liability under this section exists regardless of whether the provider or person liable had actual knowledge of the misstatement or omission.

(b) A person may not file or maintain an action under this section if the person, before filing the action, received a written offer of a refund of all amounts paid the provider, facility, or person violating this Article together with interest at the rate established monthly by the

Commissioner of Banks pursuant to G.S. 24-1.1(3), less the current contractual value of care and lodging provided prior to receipt of the offer, and if the offer recited the provisions of this section and the recipient of the offer failed to accept it within 30 days of actual receipt.

(c) An action may not be maintained to enforce a liability created under this Article unless brought before the expiration of three years after the execution of the contract for continuing care that gave rise to the violation.

(d) This Article may not limit a liability that may exist by virtue of any other statute or under common law if this Article were not in effect.

"§ 131E-222. *Investigations and subpoenas.*--The Attorney General may make such public or private investigations within or outside of this State as necessary to determine whether any person has violated or is about to violate any provision of this Article or to aid in the enforcement of this Article or to verify statements contained in any disclosure statement filed or delivered hereunder.

(a) For the purpose of any investigation or proceeding under this Article, the Attorney General may require or permit any person to file a statement in writing, under oath or otherwise, as to any of the facts and circumstances concerning the matter to be investigated.

(b) For the purpose of any investigation or proceeding under this Article, the Attorney General or a designee thereof has all the powers given to him for consumer protection. He may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, agreements or other documents or records deemed relevant or material to the inquiry, all of which may be enforced in any court of this State which has appropriate jurisdiction.

"§ 131E-223. *Cease and desist orders and injunctions.*--Whenever it appears to the Attorney General or any district attorney, upon complaint or otherwise, that any person has engaged or is about to engage in any act or practice constituting a violation of any provision of this Article or any order hereunder, this officer may bring an action in any court which has appropriate jurisdiction to enjoin the acts or practices and to enforce compliance with this Article or any order hereunder. Upon a proper showing, a permanent or temporary injunction or restraining order shall be granted and a receiver or conservator may be appointed for the defendant or the defendant's assets.

" § 131E-224. *Criminal penalties.*--Any person who willfully and knowingly violates any provision of this Article is guilty of a misdemeanor and shall, upon conviction, be fined not more than ten thousand dollars (\$10,000) or imprisoned not more than one year, or both. The Attorney General or the district attorney may institute the appropriate criminal proceedings under this Article. Nothing in this Article limits the power of the State to punish any person for any conduct that constitutes a crime under any other statute."

Sec. 2. This act shall become effective January 1, 1988.

In the General Assembly read three times and ratified this the 23rd day of April, 1987.

S.B. 167

CHAPTER 84

AN ACT TO AMEND THE PROVISIONS WHICH FORBID
LOCAL BOARD OF HEALTH MEMBERS TO SERVE MORE
THAN THREE CONSECUTIVE THREE-YEAR TERMS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 130A-35(c) reads as rewritten:

(c) Except as provided in this subsection, members of a county board of health shall serve three-year terms. No member may serve more than three consecutive three-year terms unless the member is the only person residing in the county who represents one of the six professions designated in subsection (b) of this section. The county commissioner member shall serve only as long as the member is a county commissioner. When a representative of the general public is appointed due to the unavailability of a licensed physician, a licensed dentist, a licensed optometrist, a licensed veterinarian, a registered nurse or a licensed pharmacist, that member shall serve only until a licensed physician, a licensed dentist, a licensed optometrist, a licensed veterinarian, a registered nurse or a licensed pharmacist becomes available for appointment. In order to establish a uniform staggered term structure for the board, a member may be appointed for less than a three-year term."

Sec. 2. G.S. 130A-37(c) reads as rewritten:

"(c) Except as provided in this subsection, members of a district board of health shall serve terms of three years. Two of the original members shall serve terms of one year and two of the original members shall serve terms of two years. No member shall serve more than three consecutive three-year terms unless the member is the only person residing in the district who represents one of the six professions designated in subsection (b) of this section. County

commissioner members shall serve only as long as the member is a county commissioner. When a representative of the general public is appointed due to the unavailability of a licensed physician, a licensed dentist, a licensed optometrist, a licensed veterinarian, a registered nurse or a licensed pharmacist, that member shall serve only until a licensed physician, a licensed dentist, a licensed optometrist, a licensed veterinarian, a registered nurse or a licensed pharmacist becomes available for appointment. The county commissioner members may appoint a member for less than a three-year term to achieve a staggered term structure."

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 23rd day of April, 1987.

S.B. 175

CHAPTER 85

AN ACT TO AMEND THE FAYETTEVILLE CITY CHARTER REGARDING THE BENEFITS A RETIRED CITY FIREMAN IS ENTITLED TO.

The General Assembly of North Carolina enacts:

Section 1. Section 8.3(a) of Chapter 557, 1979 Session Laws, is amended by deleting the phrase "six hundred dollars (\$600.00)" and substituting the phrase "twelve hundred dollars (\$1,200)".

Sec. 2. Nothing in this act creates a liability for the Fayetteville Firemen's Supplemental Retirement Fund unless there are sufficient current assets in the Fund to pay fully for the liability.

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 23rd day of April, 1987.

H.B. 129

CHAPTER 86

AN ACT TO CLARIFY THE PROVISIONS OF G.S. 31-42 RELATING TO THE DEVOLUTION OF A DEVISE OR LEGACY TO INDIVIDUALS OR MEMBERS OF A CLASS PREDECEASING THE TESTATOR AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 31-42(a) and (b) are rewritten to read as follows:

"(a) Unless a contrary intent is indicated by the will, where a devise or legacy of any interest in property is given to a person as an individual or as a member of a class and the person dies survived by qualified issue before the testator dies, then the qualified issue of such deceased person that survive the testator shall represent the deceased person, and the entire interest that the deceased person would have taken had he survived the testator shall pass by substitution to his qualified issue. The qualified issue shall take pursuant to the preceding sentence regardless of whether or not the deceased person dies before or after the making of the will.

(b) The term 'qualified issue' as used in subsection (a) means issue of the deceased person who would have been an heir of the testator under the provisions of the Intestate Succession Act had there been no will."

Sec. 2. G.S. 31-42(c) is amended by rewriting the first two lines thereof to read as follows:

"(c) If subsection (a) is not applicable and if a contrary".

Sec. 3. This act is effective October 1, 1987.

In the General Assembly read three times and ratified this the 23rd day of April, 1987.

H.B. 336

CHAPTER 87

AN ACT TO AUTHORIZE THE CITY OF SHELBY TO PURCHASE NATURAL GAS BY USING INFORMAL BID PROCEDURES.

The General Assembly of North Carolina enacts:

Section 1. Chapter 959, Session Laws of 1985, is amended by adding a new section to read:

"Sec. 2.1. This act also applies to the City of Shelby."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 23rd day of April, 1987.

H.B. 631

CHAPTER 88

AN ACT TO AMEND THE BUSINESS CORPORATION ACT TO PROVIDE FOR THE PROTECTION OF PUBLIC SHAREHOLDERS OF NORTH CAROLINA ORGANIZED CORPORATIONS FROM BEING COERCED BY CERTAIN BUSINESS COMBINATION PRACTICES AND TO BE DESIGNATED THE NORTH CAROLINA SHAREHOLDER PROTECTION ACT.

The General Assembly of North Carolina enacts:

Section 1. Chapter 55 of the General Statutes is amended by adding a new Article thereto to read as follows:

"Article 7. Affiliated Transactions

" § 55-75. Short title and definitions.--(a) The provisions of this Article shall be known and may be cited as The North Carolina Shareholder Protection Act.

(b) In this Article:

- (1) 'Business combination' includes any merger or consolidation of a corporation with or into any other corporation, or the sale or lease of all or any substantial part of the corporation's assets to, or any payment, sale or lease to the corporation or any subsidiary thereof in exchange for securities of the corporation of any assets (except assets having an aggregate fair market value of less than five million dollars (\$5,000,000)) of, any other entity.*
- (2) 'Common stock' means the shares of capital stock of the corporation that were not entitled to preference over any other shares, either in payment of dividends or in dissolution, at the time that the other entity acquired in excess of ten percent (10%) of the voting shares.*
- (3) 'Continuing director' means a person who was a member of the board of directors of the corporation elected by the public shareholders prior to the time that the other entity acquired in excess of ten percent (10%) of the voting shares of the corporation, or a person recommended to succeed a continuing director by a majority of the continuing directors.*
- (4) 'Exchange Act' means the Act of Congress known as the Securities Exchange Act of 1934, as the same has been or hereafter may be amended from time to time.*
- (5) 'Other consideration to be received' means, for the purposes of G.S. 55-77(a)(1) and G.S. 55-77(a)(2), the corporation's common stock retained by its existing public shareholders in the event of a business combination with the other entity in*

which the corporation is the surviving corporation.

- (6) 'Other entity' includes any corporation, person or other form of entity and any such entity with which it or its 'affiliate' or 'associate' has an agreement, arrangement or understanding, directly or indirectly, for the purpose of acquiring, holding, voting or disposing of capital stock of the corporation, or which is its 'affiliate' or 'associate', as those terms are defined in the General Rules and Regulations under the Exchange Act, together with the successors and assigns of such persons in any transaction or series of transactions not involving a public offering of the corporation's capital stock within the meaning of the Securities Act of 1933, as amended.
- (7) 'Voting shares' means shares of the corporation's capital stock entitled to vote in the election of directors.

"§ 55-76. *Voting requirement.*--Notwithstanding any other provisions of the Business Corporation Act, the affirmative vote of the holders of ninety-five percent (95%) of the voting shares of a corporation, considered for the purposes of this section as one class, shall be required for the adoption or authorization of a business combination with any other entity if, as of the record date for the determination of shareholders entitled to notice thereof and to vote thereon, the other entity is the beneficial owner, directly or indirectly, of more than twenty percent (20%) of the voting shares of the corporation, considered for the purposes of this section as one class.

"§ 55-77. *Exception to voting requirement.*--The voting requirement of G.S. 55-76 shall not be applicable to a business combination if each of the following conditions is met:

(1) The cash, or fair market value of other consideration, to be received per share by the holders of the corporation's common stock in such business combination bears the same or a greater percentage relationship to the market price of the corporation's common stock immediately prior to the announcement of such business combination by the corporation as the highest per share price (including brokerage commissions and/or soliciting dealers' fees) which such other entity has theretofore paid for any of the shares of the corporation's common stock already owned by it bears to the market price of the corporation's common stock immediately prior to the commencement of acquisition of the corporation's common stock by such other entity, directly or indirectly;

(2) The cash, or fair market value of other consideration, to be received per share by holders of the corporation's common stock in such business combination (i) is not less than the highest per share

price (including brokerage commissions and/or soliciting dealers' fees) paid by such other entity in acquiring any of its holdings of the shares of corporation's common stock and (ii) is not less than the earnings per share of the corporation's common stock for the four full consecutive fiscal quarters immediately preceding the record date for the solicitation of votes on such business combination, multiplied by the then price/earnings multiple, if any, of such other entity as customarily computed and reported in the financial community;

(3) After the other entity has acquired a twenty percent (20%) interest and prior to the consummation of such business combination: (i) the other entity shall have taken steps to ensure that the corporation's board of directors included at all times representation by continuing directors proportionate to the outstanding shares of the corporation's common stock held by persons not affiliated with the other entity (with a continuing director to occupy any resulting fractional board position); (ii) there shall have been no reduction in the rate of dividends payable on the corporation's common stock, except as may have been approved by a unanimous vote of its directors; (iii) the other entity shall not have acquired any newly issued shares of the corporation's capital stock, directly or indirectly, from the corporation, except upon conversion of any convertible securities acquired by the other entity prior to obtaining a twenty percent (20%) interest or as a result of a pro rata stock dividend or stock split; and (iv) the other entity shall not have acquired any additional shares of the corporation's outstanding common stock, or securities convertible into common stock, except as part of the transaction which resulted in the other entity acquiring its twenty percent (20%) interest;

(4) The other entity shall not have (i) received the benefit, directly or indirectly, except proportionately with other shareholders, of any loans, advances, guarantees, pledges, or other financial assistance or tax credits provided by the corporation or (ii) made any major change in the corporation's business or equity capital structure unless by a unanimous vote of the directors, in either case prior to the consummation of the business combination; and

(5) A proxy statement responsive to the requirements of the Exchange Act shall be mailed to the public shareholders of the corporation for the purpose of soliciting shareholder approval of the business combination and shall contain prominently in the forepart thereof any recommendations as to the advisability or inadvisability of the business combination which the continuing directors, or any of them, may choose to state and, if deemed advisable by a majority of

the continuing directors, an opinion of a reputable investment banking firm as to the fairness (or not) of the terms of the business combination to the remaining public shareholders of the corporation, which investment banking firm shall be selected by a majority of the continuing directors and shall be paid by the corporation a reasonable fee for its services upon receipt of such opinion.

" § 55-78. *General.*--(a) The provisions of this Article shall also apply to a business combination with an other entity which at any time has been the beneficial owner, directly or indirectly, of more than twenty percent (20%) of the outstanding voting shares, considered for the purposes of this section as one class, notwithstanding that the other entity has reduced its percentage of shares below twenty percent (20%) if, as of the record date for the determination of shareholders entitled to notice of and to vote on the business combination, the other entity is an 'affiliate' of the corporation.

(b) For the purposes of the Article, an other entity shall be deemed the beneficial owner of any shares of the corporation's capital stock which the other entity has the right to acquire pursuant to any agreement, or upon exercise of any conversion rights, warrants or options, or otherwise (whether the right to acquire shares is exercisable immediately or only after the passage of time); and, further, the outstanding shares of any class of capital stock of the corporation shall include shares deemed beneficially owned through the application of the foregoing, but shall not include any other shares which may be issuable pursuant to any agreement, or upon exercise of any conversion rights, warrants or options, or otherwise.

(c) A majority of the continuing directors shall have the power and duty to determine for the purposes of this Article on the basis of information known to them whether (i) an other entity beneficially owns more than twenty percent (20%) of the voting shares; (ii) an other entity is an 'affiliate' or 'associate' of another; (iii) an other entity has an agreement, arrangement or understanding with another; and (iv) the assets to be acquired by the corporation, or any subsidiary thereof, have an aggregate fair market value of less than five million dollars (\$5,000,000).

(d) Nothing contained in this Article shall be construed to relieve any other entity from any fiduciary obligation imposed by law. This Article shall be broadly construed so as to be applicable to any transaction reasonably calculated to avoid the application of the provisions hereof including, without limitation, any merger or other recapitalization, initiated by or for the benefit of an other entity that

owns more than twenty percent (20%) of the voting shares, which would reincorporate a domestic corporation under the laws of another state.

" § 55-79. *Exemptions.*--The provisions of G.S. 55-76 shall not be applicable to any corporation that shall be made the subject of a business combination by an other entity if: (i) the corporation did not have shares of any class, or series, listed on a national securities exchange or held of record by more than 2,000 shareholders at the time such other entity acquired in excess of ten percent (10%) of the voting shares; (ii) on or before the 90th calendar day after the effective date of this Article (or such earlier date as may be irrevocably established by resolution of the board of directors), the board of directors of the corporation adopts a bylaw stating that the provisions of this Article shall not be applicable to the corporation (neither the adoption nor the failure to adopt such a resolution or bylaw shall constitute grounds for any cause of action, at law or in equity, against the corporation or any of the directors of the corporation); (iii) in the case of a newly formed corporation after such effective date, the initial articles of incorporation of the corporation shall provide that the provisions of this Article shall not be applicable; or (iv) such business combination was the subject of an existing agreement of the corporation on the effective date of this Article."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 23rd day of April, 1987.

S.B. 21

CHAPTER 89

AN ACT TO CONFORM THE TREATMENT OF ALL INCOME TAX CREDITS RECEIVED BY A CORPORATION TO THE TREATMENT OF AN INCOME TAX CREDIT FOR PROPERTY TAXES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-130.5(a)(10) is amended as follows:

(1) by deleting the phrase "amount of property taxes allowed under Division IV of" in the first sentence of that subdivision and substituting the phrase "total amounts allowed under"; and

(2) by deleting the words "this credit" in the second sentence of that subdivision and substituting the phrase "a credit taken under this Article".

Sec. 2. This act is effective for taxable years beginning on or after January 1, 1987.

In the General Assembly read three times and ratified this the 24th day of April, 1987.

S.B. 121

CHAPTER 90

AN ACT TO AMEND THE PAROLE ELIGIBILITY REQUIREMENTS FOR COMMITTED YOUTHFUL OFFENDERS SENTENCED UNDER CHAPTER 90 OF THE GENERAL STATUTES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 90-95(h)(5) reads as rewritten:

~~"(5) A person sentenced under this subsection is not eligible for early release or early parole if the person is sentenced as a committed youthful offender and the sentencing judge may not suspend the sentence or place the person sentenced on probation. A person sentenced under this subsection as a committed youthful offender shall be eligible for release or parole no earlier than that person would have been had he been sentenced under this subsection as a regular offender. The sentencing judge may reduce the fine, or impose a prison term less than the applicable minimum prison term provided by this subsection, or suspend the prison term imposed and place a person on probation when such person has, to the best of his knowledge, provided substantial assistance in the identification, arrest, or conviction of any accomplices, accessories, co-conspirators, or principals if the sentencing judge enters in the record a finding that the person to be sentenced has rendered such substantial assistance."~~

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 24th day of April, 1987.

S.B. 207

CHAPTER 91

AN ACT TO REMOVE CERTAIN PROPERTY FROM THE CORPORATE LIMITS OF THE CITY OF RALEIGH.

The General Assembly of North Carolina enacts:

Section 1. All the area included in the following property description is hereby removed from the corporate limits of the City of Raleigh, to wit:

Beginning at an iron pipe located in a western boundary line of the property of Southland Trust Company (now or formerly) as described in deed of record in Book 3690 at Page 295 in the Wake County Public Registry, said iron pipe being located according to North Carolina grid coordinates as follows: Y=780,534.48 and X=2,059,040.72 and runs thence from said point of Beginning, South 28-30-30 West 342.43 feet to an iron pipe; thence North 62-10-13 West 109.54 feet to an iron pipe; thence South 02-40-41 East 112.24 feet to an iron pipe; thence South 89-51-44 West 86.99 feet to an iron pipe; thence North 21-24-02 West 194.83 feet to a point located in the southeastern right-of-way line of State Road No. 1739 (said right-of-way being 60 feet in width); thence North 01-31-16 East 203.08 feet to an iron pipe; thence crossing a portion of the right-of-way of State Road No. 1739, North 84-38-46 East 424.12 feet to an iron pipe; thence South 13-12-23 West 63.56 feet to the point and place of Beginning, containing approximately 2.694 acres, lying in Cedar Fork Township, Wake County, North Carolina, being all of that certain parcel entitled "Out 22 Ashley H.P.", as shown on that certain plat of survey for Southland Trust Company, Trustee, prepared by Murphy Yelle Associates, Registered Land Surveyors, dated March 27, 1986, reference to which is hereby made for a particular description. This parcel is number 296-0019, identification number 0002407 in the records of the Wake County Tax Office.

Sec. 2. Any City of Raleigh tax liens which have attached to the above described property since its annexation are hereby extinguished and declared null and void.

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 24th day of April, 1987.

S.B. 276

CHAPTER 92

AN ACT TO PROVIDE THAT THE UNIVERSITY OF NORTH CAROLINA CENTER FOR PUBLIC TELEVISION IS AN ELIGIBLE RECIPIENT UNDER THE ART IN STATE BUILDINGS PROGRAM.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143-408.4 is amended by adding a new subsection to read:

"(e) Notwithstanding subsection (d), The University of North Carolina Center for Public Television as established by G.S. 116-37.1 is an eligible recipient for art works under this act."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 24th day of April, 1987.

H.B. 204

CHAPTER 93

AN ACT MAKING TECHNICAL CORRECTIONS TO THE PROPERTY TAX STATUTES GOVERNING COLLECTION OF PROPERTY TAXES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-360(a) is rewritten to read:

"(a) Taxes levied under this Subchapter by a taxing unit are due and payable on September 1 of the fiscal year for which the taxes are levied. Taxes are payable at par or face amount if paid before January 6 following the due date. Taxes paid on or after January 6 following the due date are delinquent and are subject to interest charges. Interest accrues on taxes paid on or after January 6 as follows:

- (1) For the period January 6 to February 1, interest accrues at the rate of two percent (2%); and
- (2) For the period February 1 until the principal amount of the taxes, the accrued interest, and any penalties are paid, interest accrues at the rate of three-fourths of one percent (3/4%) a month or fraction thereof."

Sec. 2. G.S. 105-360(b) is deleted.

Sec. 3. G.S. 105-366 is amended as follows:

- (1) by deleting the words "sale of a tax lien or" in the last sentence of subsection (a);
- (2) by deleting the word "Due" in the heading to subsections (b) and (c) and substituting the word "Delinquent";
- (3) by deleting the word "due" in the first sentence of subsection (b) and substituting the word "delinquent";
- (4) by deleting the phrase "the first day of September" the first time it appears in the first sentence of subsection (c) and substituting the date "January 6";
- (5) by changing the comma after the reference "105-368" in the first sentence of subsection (c) to a period and deleting the remainder of that sentence; and
- (6) by rewriting the last sentence of subsection (c) to read:

"If the amount of taxes collected under this subsection has not yet been determined, these taxes shall be computed in accordance with G.S. 105-359 and any applicable discount shall be allowed."

Sec. 4. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 24th day of April, 1987.

H.B. 314

CHAPTER 94

AN ACT TO REVISE AND CONSOLIDATE THE CHARTER OF THE TOWN OF WALLACE.

The General Assembly of North Carolina enacts:

Section 1. The Charter of the Town of Wallace is hereby revised and consolidated to read as follows:

"THE CHARTER OF THE TOWN OF WALLACE

**"ARTICLE I. INCORPORATION, CORPORATE POWERS
AND BOUNDARIES**

"Section 1.1. *Incorporation.* The Town of Wallace, North Carolina, in Duplin and Pender Counties and the inhabitants thereof, shall continue to be a municipal body politic and corporate, under the name of the 'Town of Wallace,' hereinafter at times referred to as the 'Town.'

"Section 1.2. *Powers.* The Town shall have and may exercise all of the powers, duties, rights, privileges and immunities conferred upon the Town of Wallace specifically by this Charter or upon municipal corporations by general law. The term 'general law' is employed herein as defined in G.S. 160A-1.

"Section 1.3. *Corporate Limits.* The corporate limits shall be those existing at the time of ratification of this Charter, as set forth on the official map of the Town or in a written description, and as they may be altered from time to time in accordance with law. An accurate delineation of the current boundaries shall be maintained permanently in the office of the Town Clerk and shall be available for public inspection, as provided in G.S. 160A-22. Immediately upon alteration of the corporate limits, the appropriate filings shall be made in the offices of the Secretary of State, the Duplin or Pender County Register of Deeds, and the appropriate boards of elections, as required by general law.

"ARTICLE II. GOVERNING BODY

"Section 2.1. *Mayor and Council.* The Mayor and Council shall be the governing body of the Town.

"Section 2.2. *Council; Composition; Terms of Office.* The Council shall be composed of five members elected by all the qualified voters of the Town for staggered terms of four years.

"Section 2.3. *Mayor; Term of Office; Duties.* The Mayor shall be elected by all the qualified voters of the Town for a term of two years; shall be the official head of the Town government and preside at

meetings of the Council; shall have the right to vote only when there is an equal division on any question or matter before the Council; and shall exercise the powers and duties conferred by law or as directed by the Council.

"Section 2.4. *Mayor Pro Tempore*. The Council shall elect one of its members as Mayor Pro Tempore to perform the duties of the Mayor during his or her absence or disability, in accordance with general law. The Mayor Pro Tempore shall serve in such capacity at the pleasure of the other members of the Council.

"Section 2.5. *Meetings*. In accordance with general law, the Council shall establish a suitable time and place for its regular meetings. Special and emergency meetings may be held as provided by general law.

"Section 2.6. *Voting Requirements; Quorum*. Official actions of the Council and all votes shall be taken in accordance with applicable provisions of general law, particularly G.S. 160A-75. The quorum provisions of G.S. 160A-74 shall apply.

"Section 2.7. *Compensation; Qualifications for Office; Vacancies*. The compensation and qualifications of the Mayor and Council members shall be in accordance with general law. Vacancies that occur in any elective office of the Town shall be filled by appointment as provided in G.S. 160A-63.

"ARTICLE III. ELECTIONS

"Section 3.1. *Regular Municipal Elections*. Regular municipal elections shall be held in each odd-numbered year in accordance with the uniform municipal election laws of North Carolina. Elections shall be conducted on a nonpartisan basis and the results determined using the nonpartisan plurality method as provided in G.S. 163-292.

"Section 3.2. *Election of Council Members*. Two or three Council members shall be elected in each regular municipal election as the respective terms expire.

"Section 3.3. *Election of the Mayor*. A Mayor shall be elected in each regular municipal election.

"Section 3.4. *Special Elections and Referendums*. Special elections and referendums may be held only as provided by general law or applicable local acts of the General Assembly.

"ARTICLE IV. ORGANIZATION AND ADMINISTRATION

"Section 4.1. *Form of Government*. The Town shall operate under the council-manager form of government, in accordance with G.S. Chapter 160A, Article 7, Part 2.

"Section 4.2. *Town Manager*. The Council shall appoint a Town Manager who shall be responsible for the administration of all departments of the Town government. The Town Manager shall have all the powers and duties conferred by general law, except as expressly

limited by the provisions of this Charter.

"Section 4.3. *Town Clerk.* The Town Manager shall appoint a Town Clerk to keep a journal of the proceedings of the Council; to maintain official records and documents; to give notice of meetings; and to perform such other duties required by law or as the Council may direct.

"Section 4.4. *Tax Collector.* The Town Manager shall appoint a Tax Collector to collect all taxes owed to the Town, subject to general law, this Charter and Town ordinances.

"Section 4.5. *Town Attorney.* The Council shall appoint a Town Attorney licensed to practice law in North Carolina. It shall be the duty of the Town Attorney to represent the Town, advise Town officials and perform other duties required by law or as the Council may direct.

"Section 4.6 *Other Administrative Officers and Employees.* The Council may authorize additional offices and positions, to be filled by appointment of the Town Manager. The Council may organize the Town government as deemed appropriate, including combining any of the offices provided for in this Article, subject to the requirements of general law.

"ARTICLE V. ADDITIONAL PROVISIONS

"Section 5.1. *Alcoholic Beverage Control Stores.* Alcoholic Beverage Control Stores shall operate within the Town of Wallace as provided in Chapter 1004, Session Laws of 1965, as amended, and Chapter 18B of the General Statutes.

"Section 5.2. *Airport Property.* The Council is authorized, in its discretion, to lease, as lessor, sell or exchange at private sale any lands now owned or hereafter acquired by the Town adjoining the lands now owned by the Town for the Wallace Municipal Airport upon such terms and conditions as the Council deems reasonable and necessary. The Council is further authorized, in its discretion, to purchase or lease, as lessee, from the owners thereof any lands or any interest in lands adjoining the lands now owned or hereafter acquired by the Town for the Wallace Municipal Airport upon such terms and conditions as the governing body deems reasonable and necessary."

Sec. 2 The purpose of this act is to revise the Charter of the Town of Wallace and to consolidate certain acts concerning the property, affairs and government of the Town. It is intended to continue without interruption those provisions of prior acts which are expressly consolidated into this act, so that all rights and liabilities which have accrued are preserved and may be enforced.

Sec. 3 This act does not repeal or affect any acts concerning the property, affairs or government of public schools, or acts validating official actions, proceedings, contracts or obligations of any kind.

Sec. 4 All local acts concerning the Town of Wallace which were ratified before March 28, 1949, are repealed, but only to the extent that they concern the Town of Wallace. The following acts, having served the purposes for which they were enacted or having been consolidated into this act, are expressly repealed:

Chapter 596, Session Laws of 1949
Chapter 1166, Session Laws of 1949
Chapter 742, Session Laws of 1951
Chapter 84, Session Laws of 1951
Chapter 212, Session Laws of 1953
Chapter 891, Session Laws of 1957
Chapter 663, Session Laws of 1957
Chapter 664, Session Laws of 1957
Chapter 793, Session Laws of 1959
Chapter 280, Session Laws of 1959
Chapter 807, Session Laws of 1961
Chapter 299, Session Laws of 1963
Chapter 876, Session Laws of 1963
Chapter 959, Session Laws of 1965
Chapter 958, Session Laws of 1965
Chapter 613, Session Laws of 1967
Chapter 429, Session Laws of 1967
Chapter 729, Session Laws of 1971

Sec. 5 Chapter 1004, Session Laws of 1965, is amended to change each reference to particular sections or articles of former Chapter 18 of the General Statutes to refer to the provisions of current Chapter 18B of the General Statutes which most closely correspond, and as they may be later amended or recodified.

Sec. 6 The Mayor and Commissioners serving on the date of ratification of this act shall serve until the expiration of their terms. Thereafter those offices shall be filled as provided in Article II and III of the Charter contained in Section 1 of this act.

Sec. 7 This act does not affect any rights or interests which arose under any provisions repealed by this act.

Sec. 8 All existing ordinances, resolutions and other provisions of the Town of Wallace not inconsistent with the provisions of this act shall continue in effect until repealed or amended.

Sec. 9 No action or proceeding pending on the effective date of this act by or against the Town or any of its departments or agencies shall be abated or otherwise affected by this act.

Sec. 10 If any provision or application of this act is held invalid, such invalidity shall not affect other provisions or applications of this act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

Sec. 11 Whenever a reference is made in this act to a particular provision of the General Statutes, and such provision is later amended, superseded or recodified, the reference shall be deemed amended to refer to the amended General Statute, or to the General Statute which most clearly corresponds to the statutory provision which is superseded or recodified.

Sec. 12 This act is effective upon ratification.

In the General Assembly read three times and ratified this the 24th day of April, 1987.

H.B. 327

CHAPTER 95

AN ACT TO MODIFY WINSTON-SALEM'S POWER OF EMINENT DOMAIN.

The General Assembly of North Carolina enacts:

Section 1. Section 1 of Chapter 47 of the 1985 Session Laws reads as rewritten:

"Section 1. The City of Winston-Salem shall have the power of eminent domain and may acquire, either by purchase, gift or condemnation, any land, right of access, right-of-way, water right, privilege, easement, or any other interest in or relating to land, water or improvements, either within or without the city limits in Forsyth County, for any lawful public use or purpose. In the exercise of the power of eminent domain, the city is vested with all power and authority now or hereafter granted by the laws of North Carolina applicable to the City of Winston-Salem, and the city shall follow the procedures now or hereafter prescribed by said laws; provided that, notwithstanding the provisions of G.S. 40A-1, in the exercise of its authority of eminent domain for the acquisition of property ~~within the city limits~~ to be used for streets and highways, water supply and distribution systems, sewage collection and disposal systems and airports, the City of Winston-Salem is authorized to use the procedure and authority prescribed in Article 9 of Chapter 136 of the General Statutes, as now or hereafter amended; provided further, that whenever therein the words 'Secretary' or 'Secretary of

Transportation' appear, they shall be deemed to include the 'City Manager'; provided further that nothing herein shall be construed to enlarge the power of the City of Winston-Salem to condemn property already devoted to public use. The City of Winston-Salem is also vested with the authority to condemn for public library purposes property, rights, privileges, easements and restrictive covenants and conditions, including any restrictive covenants and conditions applicable to real estate now or hereafter owned, restricting the use of same in any manner whatsoever. This act is supplemental to the powers of the City of Winston-Salem under Chapter 40A of the General Statutes."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 24th day of April, 1987.

H.B. 339

CHAPTER 96

AN ACT TO MAKE PERMANENT A TEMPORARY ACT
ALLOWING ELECTROFISHING FOR CATFISH IN A
PORTION OF THE CAPE FEAR RIVER IN BLADEN COUNTY.

The General Assembly of North Carolina enacts:

Section 1. Section 3 of Chapter 363, Session Laws of 1985, is repealed.

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 24th day of April, 1987.

H.B. 344

CHAPTER 97

AN ACT TO PERMIT TAKING CROWS WITH THE AID OF
ELECTRONIC CALLING DEVICES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 113-291.1(b)(2) is amended by deleting the period at the end of the first sentence and adding the clause:

"Provided, however, that crows may be taken with the aid of electronic calling devices."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 24th day of April, 1987.

AN ACT TO PERMIT THE TAKING OF FOXES IN BEAUFORT COUNTY.

The General Assembly of North Carolina enacts:

Section 1. Notwithstanding any other provision of law, there is an open season for taking foxes with weapons from December 1 through January 1 of each year.

Sec. 2. Notwithstanding any other provision of law, there is an open season for taking foxes by trapping from January 2 through January 31 of each year. During this season, all leghold traps set on dry land with solid anchor shall have at least three swivels in the trap chain and no leghold traps larger than size one and one-half may be used.

Sec. 3. A season bag limit of ten applies in the aggregate to all foxes taken during the weapons and trapping seasons established in this act.

Sec. 4. The Wildlife Resources Commission shall provide for the sale of foxes taken lawfully pursuant to this act.

Sec. 5. This act applies only to Beaufort County.

Sec. 6. This act shall become effective October 1, 1987.

In the General Assembly read three times and ratified this the 24th day of April, 1987.

AN ACT TO LIMIT THE USE OF FISH TRAPS TO TAKE NONGAME FISH IN INLAND FISHING WATERS IN CERTAIN COUNTIES.

The General Assembly of North Carolina enacts:

Section 1. It is unlawful to use a trap larger than two feet in height, two feet in width, or five feet in length as a special device to take nongame fish from inland fishing waters or to use a wing or lateral device, whether attached or not, in conjunction with a trap to guide, direct, or herd fish into such trap.

Sec. 2. It is unlawful for a person who is licensed to use traps in taking nongame fish from inland waters for sale to place or maintain more than 10 traps in inland waters at a time, whether at one or several locations.

Sec. 3. Violation of this act is a misdemeanor punishable by a fine of not less than five hundred dollars (\$500.00), imprisonment for not more than six months, or both.

Sec. 4. This act applies only to the counties of Anson, Cabarrus, Montgomery, Richmond, and Stanly.

Sec. 5. This act shall become effective October 1, 1987, and shall remain in effect until the effective date of regulations adopted by the Wildlife Resources Commission defining the types of traps that may be used as special fishing devices in inland waters.

In the General Assembly read three times and ratified this the 24th day of April, 1987.

H.B. 186

CHAPTER 100

AN ACT TO PROVIDE FOR SHORT-TERM COMMITMENTS OF JUVENILES TO LOCAL APPROVED FACILITIES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 7A-652(c) is rewritten to read:

"(c) In no event shall commitment of a delinquent juvenile be for a period of time in excess of that period for which an adult could be committed for the same act. Any juveniles committed for an offense for which an adult would be sentenced for 30 days or less shall be assigned to a local detention home as defined by G.S. 7A-517(15) or a regional home as defined by G.S. 7A-517(26)."

Sec. 2. This act shall become effective October 1, 1987, and applies to juveniles committed on and after that date.

In the General Assembly read three times and ratified this the 27th day of April, 1987.

H.B. 187

CHAPTER 101

AN ACT TO PROVIDE TEMPORARY SECURE CUSTODY FOR JUVENILES CHARGED WITH CERTAIN MISDEMEANORS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 7A-574(b) is amended by inserting a new subdivision between (1) and (2), to read:

"(1.1) The juvenile is presently charged with a misdemeanor at least one element of which is assault on a person; or"

Sec. 2. This act shall become effective October 1, 1987.

In the General Assembly read three times and ratified this the 27th day of April, 1987.

AN ACT TO PROVIDE A MODEL CODE FOR PROCUREMENT
OF ARCHITECTURAL AND ENGINEERING SERVICES BY
STATE AND LOCAL GOVERNMENT.

The General Assembly of North Carolina enacts:

Section 1. It is the public policy of this State and all public subdivisions and Local Governmental Units thereof, except in cases of special emergency involving the health and safety of the people or their property, to announce all requirements for architectural and engineering services, to select firms qualified to provide such services on the basis of demonstrated competence and qualification for the type of professional services required without regard to fee other than unit price information at this stage, and thereafter to negotiate a contract for architectural or engineering services at a fair and reasonable fee with the best qualified firm. If a contract cannot be negotiated with the best qualified firm, negotiations with that firm shall be terminated and initiated with the next best qualified firm.

Sec. 2. Units of local government or the North Carolina Department of Transportation may in writing exempt particular projects from the provisions of the act in the case of:

(a) proposed projects where an estimated professional fee is in an amount less than thirty thousand dollars (\$30,000), or

(b) other particular projects exempted in the sole discretion of the Department of Transportation or the unit of local government, stating the reasons therefor and the circumstances attendant thereto.

Sec. 3. On architectural or engineering contracts, the Department of Transportation or the Department of Administration may provide, upon request by a County, City, Town or other subdivision of the State, advice in the process of selecting consultants or in negotiating consultant contracts with architects and engineers or both.

Sec. 4. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 27th day of April, 1987.

AN ACT TO PROVIDE FOR TECHNICAL AMENDMENTS TO
THE EMPLOYMENT SECURITY LAW OF NORTH
CAROLINA.

The General Assembly of North Carolina enacts:

Section 1. G.S. 96-3(d) is amended by inserting "or his designee" after "chairman" and before "and".

Sec. 2. G.S. 96-8(5)n is amended by deleting from the second sentence "Farm Labor Contractor Registration Act of 1963" and substituting "Migrant and Seasonal Agricultural Worker Protection Act".

Sec. 3. G.S. 96-8(6)g is amended by deleting from the last sentence "January 1, 1980" and substituting "January 1, 1993".

Sec. 4. G.S. 96-18(g)(3) is amended by adding a new paragraph after paragraph d to read as follows:

"e. To the extent permissible under the laws and Constitution of the United States, the Commission is authorized to enter into or cooperate in arrangements or reciprocal agreements with appropriate and duly authorized agencies of other states or the United States Secretary of Labor, or both, whereby: (1) Overpayments of unemployment benefits as determined under subparagraphs (1) and (2) above shall be recovered by offset from unemployment benefits otherwise payable under the unemployment compensation law of another state, and overpayments of unemployment benefits as determined under the unemployment compensation law of such other state shall be recovered by offset from unemployment benefits otherwise payable under this Chapter; and, (2) Overpayments of unemployment benefits as determined under applicable federal law, with respect to benefits or allowances for unemployment provided under a federal program administered by this State under an agreement with the United States Secretary of Labor, shall be recovered by offset from unemployment benefits otherwise payable under this Chapter or any such federal program, or under the unemployment compensation law of another state or any such federal unemployment benefit or allowance program administered by such other state under an agreement with the United States Secretary of Labor if such other state has in effect a reciprocal agreement with the United States Secretary of Labor as authorized by Section 303(g)(2) of the federal Social Security Act, if the United States agrees, as provided in the reciprocal agreement with this State entered into under such Section 303(g)(2) of the Social Security Act, that overpayments of unemployment benefits as determined under subparagraphs (1) and (2) above, and overpayment as determined under the unemployment compensation law of another state which has in effect a reciprocal agreement with the United States Secretary of Labor as authorized by Section 303(g)(2) of the Social Security Act, shall be recovered by offset from benefits or allowances for unemployment otherwise payable under a federal program administered by this State or such other state under an agreement with the United States Secretary of Labor."

Sec. 5. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 27th day of April, 1987.

S.B. 658

CHAPTER 104

AN ACT AUTHORIZING THE COUNTY OF CLEVELAND TO
MAKE UNRESTRICTED GRANTS TO INCORPORATED
MUNICIPALITIES IN SAID COUNTY OF CLEVELAND.

The General Assembly of North Carolina enacts:

Section 1. The County of Cleveland may make unrestricted grants to incorporated municipalities located within said County of Cleveland.

Sec. 2. All laws and clauses of laws in conflict herewith are hereby repealed to the extent of said conflict.

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 27th day of April, 1987.

S.B. 216

CHAPTER 105

AN ACT TO AMEND AND CLARIFY STATUTES CONTAINED
IN CHAPTER 90 OF THE GENERAL STATUTES DEALING
WITH THE DEFINITION OF AND REGULATION OF
COCAINE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 90-87(14a) is amended to read as follows:

"The term 'isomer' means, except as used in G.S. 90-87(17)(d), G.S. 90-89(c), G.S. 90-90(a)(4), and G.S. 90-95(h)(3), the optical isomer. As used in G.S. 90-89(c) the term 'isomer' means the optical, position, or geometric isomer. As used in G.S. 90-87(17)(d), G.S. 90-90(a)(4), and G.S. 90-95(h)(3) the term 'isomer' means the optical isomer or diastereoisomer."

Sec. 2. G.S. 90-87(17)(d) is amended to read as follows:

"Cocaine and any salt, isomer, salts of isomers, compound, derivative, or preparation thereof, or coca leaves and any salt, isomer, salts of isomers, compound, derivative or preparation of coca leaves, or any salt, isomer, salts of isomers, compound, derivative, or preparation thereof which is chemically equivalent or identical with any of these substances, except that the substances shall not include decocanized coca leaves or extraction of coca leaves, which extractions do not contain cocaine or ecgonine."

Sec. 3. G.S. 90-90(a)(4) is amended to read as follows:

"(4) Cocaine and any salt, isomer, salts of isomers, compound, derivative, or preparation thereof, or coca leaves and any salt, isomer, salts of isomers, compound, derivative, or preparation of coca leaves, or any salt, isomer, salts of isomers, compound, derivative, or preparation thereof which is chemically equivalent or identical with any of these substances, except that the substances shall not include decocanized coca leaves or extraction of coca leaves, which extractions do not contain cocaine or ecgonine."

Sec. 4. G.S. 90-95(d)(2) is amended to read as follows:

"(2) A controlled substance classified in Schedule II, III, or IV shall be guilty of a misdemeanor and shall be sentenced to a term of imprisonment of not more than two years or fined not more than two thousand dollars (\$2,000), or both in the discretion of the court. If the controlled substance exceeds four tablets, capsules, or other dosage units or equivalent quantity of hydromorphone or if the quantity of the controlled substance, or combination of the controlled substances, exceeds one hundred tablets, capsules or other dosage units, or equivalent quantity, including one-half gram or more of phencyclidine, the violation shall be punishable as a Class I felony. If the controlled substance is one gram or more of cocaine and any salt, isomer, salts of isomers, compound, derivative, or preparation thereof, or coca leaves and any salt, isomer, salts of isomers, compound, derivative, or preparation of coca leaves, or any salt, isomer, salts of isomers, compound, derivative or preparation thereof which is chemically equivalent or identical with any of these substances (except decocanized coca leaves or any extraction of coca leaves which does not contain cocaine or ecgonine), the violation shall be punishable as a Class I felony."

Sec. 5. G.S. 90-95(h)(3) is amended to read as follows:

"(3) Any person who sells, manufactures, delivers, transports, or possesses 28 grams or more of cocaine and any salt, isomer, salts of isomers, compound, derivative, or preparation thereof, or any coca leaves and any salt, isomer, salts of isomers, compound, derivative, or preparation of coca leaves, and any salt, isomer, salts of isomers, compound, derivative or preparation thereof which is chemically equivalent or identical with any of these substances (except decocanized coca leaves or any extraction of coca leaves which does not contain cocaine) or any mixture containing such substances, shall be guilty of a felony, which felony shall be known as 'trafficking in cocaine' and if the quantity of such substance or mixture involved:"

Sec. 6. This act shall become effective October 1, 1987.

In the General Assembly read three times and ratified this the 27th day of April, 1987.

H.B. 126

CHAPTER 106

AN ACT TO REGULATE THE ADOPTION OF VOTING SYSTEMS BY LOCAL GOVERNMENTS.

The General Assembly of North Carolina enacts:

Section 1. Article 14 of Chapter 163 of the General Statutes is rewritten to read:

"Article 14.

Voting Systems.

" § 163-160. *Voting systems; approval; rules and regulations.*--The State Board of Elections shall have authority to approve types of voting systems for use in primaries and elections held in this State. The use of voting systems that have been approved by the State Board of Elections in any primary or election held in any county or municipality shall be as valid as the use of paper ballots by the voters.

The State Board of Elections shall prescribe rules and regulations for the adoption, handling, operation, and honest use of voting systems, including, but not limited to, the following:

- (1) Types of voting systems approved for use in this State;
- (2) Form of ballot labels to be used on voting systems;
- (3) Operation and manner of voting on voting systems;
- (4) Instruction of precinct officials in the use of voting systems;
- (5) Instruction of voters in the use of voting systems;
- (6) Assistance to voters using voting systems;
- (7) Duties of custodians of voting systems;
- (8) Examination of voting systems before use in a primary election;

and

(9) Use of paper or other ballots where voting systems are used as set out in G.S. 163-162.

" § 163-160.1. *Definition of 'voting systems'.*--As used in this Article, 'voting systems' shall mean mechanical voting machines and computer-based and optical-scan election systems.

" § 163-161. *Adoption of voting systems by local governments.*--(a) Discretionary authority. The board of county commissioners, with the approval of the county board of elections, may adopt and purchase or lease a voting system of a type approved by the State Board of

Elections for use in some or all voting places in the county at some or all primaries and elections. Specifically, the board may purchase a voting system upon an installment basis or otherwise, or it may lease a voting system with or without an option to purchase.

The board of county commissioners may decline to adopt and purchase or lease any voting system recommended by the county board of elections, but may not adopt and purchase or lease any voting system that has not been approved by the county board of elections.

(b) Requirements for County Board of Elections. Before approving the adoption and purchase or lease of any voting system by the board of county commissioners, the county board of elections shall:

- (1) obtain a current financial statement from the proposed vendor or lessor of the voting system, and send copies of the statement to the county attorney and the chief county financial officer, and
- (2) witness a demonstration, in that county or at a site designated by the State Board of Elections, of the voting system by the proposed vendor or lessor, and also witness a demonstration of at least one other type of voting system approved by the State Board of Elections.
- (3) test, during a primary or election, the proposed voting system in at least one precinct in the county where the system would be used if adopted."

(c) Implementation of Decision. When the board of county commissioners has decided to adopt and purchase or lease a voting system for voting places under the provisions of subsection (a) of this section, the board of county commissioners shall, as soon as practical, provide for each of those voting places sufficient equipment of the approved voting system in complete working order. If it is impractical to furnish each voting place with the equipment of the approved voting system, that which has been obtained may be placed in voting places chosen by the county board of elections. In that case, the county board of elections shall choose the voting places and allocate the equipment in a way that as nearly as practicable provides equal access to the voting system for each voter.

The county board of elections shall appoint as many voting system custodians as may be necessary for the proper preparation of the system for each primary and election and for its maintenance, storage and care.

(d) Municipalities. The governing board of the municipality shall have the same authority with respect to the acquisition and use of a voting system for municipal primaries and elections that boards of

county commissioners are granted in subsection (a) with respect to other primaries and elections.

The decision of the governing board of the municipality shall be subject to approval of the county board of elections, as described in subsection (a), if the county board of elections administers the elections of the municipality, or by the approval of the municipal board of elections if the municipal board of elections administers the elections of the unit. Before approving the adoption and purchase or lease of a voting system, the county or municipal board of elections shall be subject to all the requirements of subsection (b), except that in the case of a municipal board of elections, the financial statement shall be sent to the municipal attorney and the chief municipal finance officer, the demonstration shall be conducted in the municipality or at a site designated by the State Board of Elections, and the testing shall be done in a precinct of the municipality.

When a municipal governing body has decided to adopt and purchase a voting system for voting places under the provisions of this subsection, that governing body shall have all the duties parallel to those imposed by subsection (c) on a board of county commissioners and a county board of elections: that is, the municipal governing body shall, as soon as practical, provide for each of those voting places sufficient equipment of the approved voting system or, if that is impractical, provide the available equipment of the approved voting system in the places it chooses, and shall appoint the necessary number of voting-system custodians. In the case that equipment of the approved system for every voting place is impractical, the municipal governing board shall choose the voting places and allocate the equipment in a way that as nearly as practicable provides equal access to the voting system for every voter.

" § 163-162. *Use of paper ballots where voting systems are used.*--In counties in which voting systems are used in some or all precincts, the county board of elections shall have authority to furnish paper ballots of each kind to precincts using voting systems for use by:

(1) Persons required to sign their ballots under the provisions of G.S. 163-150(e), and persons who vote pursuant to G.S. 163-155; and

(2) Persons who wish to write in names of candidates who are not on the ballot, if it is not practical to use voting systems to record write-in votes in particular precincts because of the horizontal or vertical printing limitations of G.S. 163-137, provided the county board of elections has been issued written approval from the State

Board of Elections, and

(3) Persons who vote at the office of the county board of elections. For voters who vote at the county board office, the county board may furnish, in lieu of paper ballots, ballots of a voting system approved by the State Board of Elections, provided those ballots are identifiable and retrievable."

Sec. 2. This act shall become effective July 1, 1987.

In the General Assembly read three times and ratified this the 28th day of April, 1987.

H.B. 236

CHAPTER 107

AN ACT TO PROVIDE THAT ELECTRIC AND TELEPHONE
MEMBERSHIP CORPORATIONS MAY INDEMNIFY
DIRECTORS, OFFICERS, EMPLOYEES, OR AGENTS TO THE
SAME EXTENT AS NONPROFIT CORPORATIONS.

The General Assembly of North Carolina enacts:

Section 1. Chapter 117 of the General Statutes is amended by adding a new Article to read:

"Article 6.

"Indemnification.

"§ 117-46. *Indemnification of directors, officers, employees, or agents.*--The powers, authority and requirements as to indemnification, payment of expenses, and purchase of liability insurance for directors, officers, employees and agents, as set out in G.S. 55A-17.1, 55A-17.2 and G.S. 55A-17.3 shall apply to and may be exercised by any corporation formed under this Chapter. The indemnification of a director, officer, employee or agent of a corporation provided by this section shall not be deemed exclusive of any other rights to which such director, officer, employee or agent may be entitled, under any bylaw, agreement, vote of board of directors or members, or otherwise with respect to any liability or litigation expenses arising out of his activities as director, officer, employee, or agent."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 28th day of April, 1987.

H.B. 520

CHAPTER 108

AN ACT TO APPROPRIATE FUNDS FROM THE SPECIAL EMPLOYMENT SECURITY ADMINISTRATION FUND FOR THE REMAINDER OF THE 1986-87 FISCAL YEAR TO COLLECT AND ADMINISTER THE TAX LEVIED BY G.S. 96-9(b)(3)j.

The General Assembly of North Carolina enacts:

Section 1. Notwithstanding G.S. 96-5(c), there is appropriated from the Special Employment Security Administration Fund to the Employment Security Commission of North Carolina the sum of two hundred fifty-one thousand four hundred six dollars (\$251,406) to fund the cost of collecting and administering the tax levied by G.S. 96-9(b)(3)j. as enacted by Chapter 17 of the 1987 Session Laws for the remainder of the 1986-87 fiscal year.

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 28th day of April, 1987.

H.B. 913

CHAPTER 109

AN ACT TO APPOINT PERSONS TO VARIOUS PUBLIC OFFICES UPON THE RECOMMENDATION OF THE SPEAKER OF THE HOUSE OF REPRESENTATIVES.

Whereas, G.S. 120-121 authorizes the General Assembly to make certain appointments to public offices upon the recommendation of the Speaker of the House of Representatives; and

Whereas, the Speaker of the House of Representatives has made recommendations; Now, therefore,

The General Assembly of North Carolina enacts:

Section 1. Charles C. Braswell of Wake County is appointed to the State Building Commission for a term to expire on June 30, 1988. This is the categorical appointment for a manager of physical plant operations whose responsibilities are or were in the operations and maintenance of physical facilities. Finley Pace, Jr., of Henderson County is appointed to the State Building Commission for a term to expire on June 30, 1989. This is the categorical appointment for a licensed mechanical contractor whose primary business is or was in the installation of mechanical systems for buildings. John C. Laughridge of McDowell County is appointed to the State Building Commission for a term to expire on June 30, 1990. This is the

categorical appointment for a licensed building contractor whose primary business is or was in the construction of buildings.

Sec. 2. Robert H. Gage of Burke County is appointed to the State Banking Commission for a term to expire on April 1, 1991.

Sec. 3. W.S. (Dick) Brown of Scotland County is appointed to the North Carolina Hazardous Waste Treatment Commission for a term to expire on January 31, 1991.

Sec. 4. Unless otherwise specified, all appointments made by this act are for terms to begin upon ratification of this act.

Sec. 5. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 28th day of April, 1987.

S.B. 674

CHAPTER 110

**AN ACT TO APPOINT PERSONS TO VARIOUS PUBLIC
OFFICES UPON THE RECOMMENDATION OF THE
PRESIDENT OF THE SENATE.**

Whereas, G.S. 120-121 authorizes the General Assembly to make certain appointments to public offices upon the recommendation of the President of the Senate; and

Whereas, the President of the Senate has made recommendations;
Now, therefore,

The General Assembly of North Carolina enacts:

Section 1. Gary Garlow of New Hanover County is appointed to the State Building Commission for a term to expire June 30, 1990. This is the categorical appointment for a registered engineer. Will Parker of Guilford County is appointed to the State Building Commission for a term to expire June 30, 1989. This is the categorical appointment for a public member. Ray Sparrow of Wake County is appointed to the State Building Commission for a term to expire June 30, 1988. This is the categorical appointment for a public member knowledgeable in building construction.

Sec. 2. Henry M. Von Oesen of New Hanover County is appointed to the North Carolina Hazardous Waste Study Commission for a term to expire January 31, 1991. Alvis Greely Turner of Orange County is appointed to the North Carolina Hazardous Waste Treatment Commission for a term to expire January 31, 1991.

Sec. 3. All appointments made by this act are for terms to begin upon ratification of this act.

Sec. 4. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 28th day of April, 1987.

S.B. 164

CHAPTER 111

AN ACT TO PROVIDE FOR THE SALE OF CLEAN
DETERGENTS IN NORTH CAROLINA.

Whereas, algae blooms have choked the Chowan River, Neuse River, and Tar River and have threatened Falls Lake, Jordan Lake, Pamlico Sound, and Albemarle Sound; and

Whereas, excess nutrients, especially phosphorus, from municipal wastewater treatment plants, septic tanks, urban runoff and agricultural runoff cause algae blooms; and

Whereas, municipalities discharging to nutrient sensitive waters are required to remove phosphorus at their wastewater treatment plants; and

Whereas, many local governments have enacted ordinances to reduce urban runoff and stormwater pollution in watersheds and along streams and rivers; and

Whereas, farmers, assisted by funds provided since 1984 by the General Assembly for the Agriculture Cost Share Program for Nonpoint Source Pollution Control, are using agricultural best management practices to reduce agricultural runoff and to conserve soil; and

Whereas, requiring the use of clean, phosphate-free laundry detergents will immediately reduce the amount of phosphorus in North Carolina's rivers, lakes and sounds at no cost to consumers or to municipalities; and

Whereas, requiring the use of clean, phosphate-free laundry detergents will significantly reduce the amount of phosphorus that municipalities will have to remove at their wastewater treatment plants; and

Whereas, our neighbors the Commonwealth of Virginia and the State of Maryland have enacted similar legislation to address the problem of excess nutrients in their waters; and

Whereas, the Environmental Management Commission at its meeting on March 12, 1987, unanimously adopted a resolution urging the General Assembly to enact legislation limiting phosphorus in laundry detergents; Now, therefore,

The General Assembly of North Carolina enacts:

Section 1. Chapter 143 of the General Statutes is amended by adding a new section to read:

" § 143-214.4. *Certain cleaning agents containing phosphorus prohibited.*--(a) No person may manufacture, store, sell, use, or distribute for sale or use any cleaning agent containing phosphorous in the State, except as otherwise provided in this section.

(b) As used in this section, 'cleaning agent' means a laundry detergent, dishwashing compound, household cleaner, metal cleaner or polish, industrial cleaner, or other substance that is used or intended for use for cleaning purposes.

(c) This section shall not apply to cleaning agents which are used:

- (1) in agricultural or dairy production;
- (2) to clean commercial food or beverage processing equipment or containers;
- (3) as industrial sanitizers, metal brighteners, or acid cleaners, including those containing phosphoric acid or trisodium phosphate;
- (4) in industrial processes for metal, fabric or fiber cleaning and conditioning;
- (5) in hospitals, clinics, nursing homes, other health care facilities, or veterinary hospitals or clinics;
- (6) by a commercial laundry or textile rental service company to provide laundry service to hospitals, clinics, nursing homes, other health care facilities, or veterinary hospitals or clinics or to clean textile products owned by a commercial laundry or textile rental service company and supplied to commercial users of the products on a rental basis;
- (7) in the manufacture of health care or veterinary supplies;
- (8) in any medical, biological, chemical, engineering or other such laboratory, including those associated with any academic or research facility;
- (9) as water softeners, antiscald agents, or corrosion inhibitors, where such use is in a closed system such as a boiler, air conditioner, cooling tower, or hot water heating system;
- (10) to clean hard surfaces including windows, sinks, counters, floors, ovens, food preparation surfaces, and plumbing fixtures.

(d) This section shall not apply to cleaning agents which:

- (1) contain phosphorus in an amount not exceeding five-tenths of one percent (0.5%) by weight which is incidental to manufacturing;

- (2) contain phosphorus in an amount not exceeding eight and seven-tenths percent (8.7%) by weight and which are intended for use in a commercial or household dishwashing machine;
- (3) are manufactured, stored, sold, or distributed for use solely outside the State.

(e) The Environmental Management Commission may permit the use of a cleaning agent which contains phosphorus in an amount exceeding five-tenths of one percent (0.5%) but not exceeding eight and seven-tenths percent (8.7%) by weight upon a finding that there is no adequate substitute for such cleaning agent, or that compliance with this section would otherwise be unreasonable or create a significant hardship on the user. The Environmental Management Commission shall adopt rules to administer this subsection.

(f) Any person who manufactures, sells or distributes any cleaning agent in violation of this section shall be guilty of a misdemeanor punishable by a fine not to exceed fifty dollars (\$50.00).

(g) Any person who uses any cleaning agent in violation of the provisions of this section shall be responsible for an infraction for which the sanction is a penalty of not more than ten dollars (\$10.00)."

Sec. 2. G.S. 143-215.3(a) is amended by adding a new subsection (16) to read:

"(16) To adopt rules limiting the manufacture, storage, sale, distribution or use of cleaning agents containing phosphorus pursuant to G.S. 143-214.4(e), and to adopt rules limiting the manufacture, storage, sale, distribution or use of cleaning agents containing nitrilotriacetic acid."

Sec. 3. This act shall become effective January 1, 1988, except that Section 2 is effective upon ratification.

In the General Assembly read three times and ratified this the 29th day of April, 1987.

H.B. 4

CHAPTER 112

AN ACT TO PERMIT THE AGRICULTURAL FINANCE AUTHORITY TO ENGAGE IN CERTAIN INVESTMENTS, AND TO TEMPORARILY EXEMPT IT FROM THE ADMINISTRATIVE PROCEDURE ACT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 122D-16 reads as rewritten:

"§ 122D-16. *Trust funds.*--Notwithstanding any other provisions of law to the contrary, all moneys received pursuant to the authority of this Chapter shall be deemed to be trust funds to be held and applied

solely as provided in this Chapter. The resolution authorizing any obligations or the trust agreement securing the same may provide that any of such moneys may be temporarily invested pending the disbursement thereof and shall provide that any officer with whom, or any bank or trust company with which, such moneys shall be deposited, shall act as trustee of such moneys and shall hold and apply the same for the purposes hereof, subject to such regulations as this Chapter and such resolution or trust agreement may provide. Any such moneys or any other moneys of the Authority may be invested as provided in G.S. 159-28.1, in the following:

- (1) Bonds, notes or treasury bills of the United States;
- (2) Non-convertible debt securities of the following issuers:
 - a. The Federal Home Loan Bank Board;
 - b. The Federal National Mortgage Association;
 - c. The Federal Farm Credit Bank; and
 - d. The Student Loan Marketing Association;
- (3) Any other obligations not listed above which are guaranteed as to principal and interest by the United States or any of its agencies;
- (4) Certificates of deposit and other evidences of deposit at state and federal chartered banks and savings and loan associations; provided that any principal amount of such certificate in excess of the amount insured by the federal government or any agency thereof be fully collateralized;
- (5) Obligations of the United States or its agencies under a repurchase agreement for a shorter time than the maturity date of the security itself if the market value of the security itself is more than the amount of funds invested;
- (6) Money market funds whose portfolios consist of any of the foregoing investments;
- (7) A guaranteed investment or similar contract, which provides for the investment of funds at a guaranteed rate of return, with an insurance company or depository financial institution with a claim paying rating of no less than either of the two highest grades given by a nationally recognized rating agency; and
- (8) Any other investment authorized by law for the investment of funds by a unit of local government."

Sec. 2. G.S. 150B-1(d) reads as rewritten:

"(d) The following are specifically exempted from the provisions of this Chapter: the Administrative Rules Review Commission, the Employment Security Commission, the Industrial Commission, the Occupational Safety and Health Review Board, the North Carolina

Agricultural Finance Authority until March 1, 1988, and the Utilities Commission.

The North Carolina National Guard is exempt from the provisions of this Chapter in exercising its court-martial jurisdiction.

The Department of Correction is exempt from the provisions of this Chapter, except for Article 5 of this Chapter and G.S. 150B-13 which shall apply.

Articles 2, 3, and 3A of this Chapter shall not apply to the Department of Transportation in rule making or administrative hearings as provided for by Chapter 20 of the General Statutes or to the Department of Revenue.

Article 4 of this Chapter, governing judicial review of final administrative decisions, shall apply to The University of North Carolina and its constituent or affiliated boards, agencies, and institutions, but The University of North Carolina and its constituent or affiliated boards, agencies, and institutions are specifically exempted from the remaining provisions of this Chapter. Article 4 of this Chapter shall not apply to the State Banking Commission, the Commissioner of Banks, the Savings and Loan Division of the Department of Commerce, and the Credit Union Division of the Department of Commerce.

Article 3 of this Chapter shall not apply to agencies governed by the provisions of Article 3A of this Chapter, as set out in G.S. 150B-38(a)."

Sec. 3. G.S. § 122D-3(1) is hereby amended by adding the words "or refinancing" after the word "financing".

Sec. 4. G.S. § 122D-6(15) is hereby amended by adding the words "with or without credit enhancement devices" after the word "indebtedness".

Sec. 5. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 29th day of April, 1987.

H.B. 161

CHAPTER 113

AN ACT TO REQUIRE POLITICAL COMMITTEES TO BE LABELED ACCURATELY.

The General Assembly of North Carolina enacts:

Section 1. G.S. 163-278.7(b)(1) is rewritten to read:

"(1) The Name, Address, and Purpose of the Candidate, Political Committee, or Referendum Committee. When the political committee or referendum committee is created pursuant to G.S. 163-278.19(b), the name shall be or include the name of the corporation, insurance

company, business entity, labor union or professional association whose officials, employees, or members established the committee. When the political committee or referendum committee is not created pursuant to G.S. 163-278.19(b), the name shall be or include the economic interest, if identifiable, principally represented by the committee's organizers or intended to be advanced by use of the committee's receipts."

Sec. 2. G.S. 163-278.14 is amended by adding one new subsection to read:

"(c) No political committee or referendum committee shall make any contribution unless in doing so it reports to the recipient the contributor's name as required in G.S. 163-278.7(b)(1)."

Sec. 3. G.S. 163-278.19(b) is amended by inserting after the citation "G.S. 278.6(14)" the following to read:

"or a referendum committee as defined in G.S. 163-278.6(18b)".

Sec. 4. This act shall become effective July 1, 1987, provided that any political committee or referendum committee other than an inactive political or referendum committee under G.S. 163-278.10 shall file an amended statement of organization no later than September 1, 1987, if this act requires naming or information not provided in the organizational statement already filed.

In the General Assembly read three times and ratified this the 1st day of May, 1987.

S.B. 225

CHAPTER 114

AN ACT TO AMEND THE LAW REGARDING KINDERGARTEN HEALTH ASSESSMENTS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 130A-440(c) reads as rewritten:

"(c) The health assessment shall be conducted by a physician licensed to practice medicine, a physician's assistant as defined in G.S. 90-18.1(a), a certified nurse practitioner, or a public health nurse meeting the North Carolina Division of Health Services' Standards for Early Periodic Screening, Diagnosis, and Treatment Screening."

Sec. 2. Section 2 of Chapter 1017, 1985 Session Laws, Regular Session 1986, reads as rewritten:

"~~Sec. 2. This act shall become effective July 1, 1987~~ January 1, 1988. However, upon ratification of this act, the Commission for Health Services shall adopt rules pursuant to the authority granted under G.S. 130A-443. These rules may not become effective until January 1, 1988."

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 1st day of May, 1987.

H.B. 359

CHAPTER 115

AN ACT TO PROVIDE THAT A DEALER IS NOT REQUIRED TO
KEEP SALES RECORDS OF PISTOL CARTRIDGES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 14-406 reads as rewritten:

"§ 14-406. Dealer to keep record of sales.--Every dealer in pistols, ~~pistol cartridges~~ and other weapons mentioned in this Article shall keep an accurate record of all sales thereof, including the name, place of residence, date of sale, etc., of each person, firm, or corporation to whom or which such sales are made, which record shall be open to the inspection of any duly constituted State, county or police officer, within this State."

Sec. 2. G.S. 14-409.5 reads as rewritten:

"§ 14-409.5. Dealer to keep record of sales.--Every dealer in pistols, ~~pistol cartridges~~ and other weapons mentioned in this article shall keep an accurate record of all sales thereof, including the name, place of residence, date of sale, etc., of each person, firm, or corporation to whom or which such sales are made, which record shall be open to the inspection of any duly constituted State, county or police officer, within this State."

Sec. 3. This act is effective upon ratification. Prosecutions for offenses occurring before the effective date of this act are not abated or affected by this act.

In the General Assembly read three times and ratified this the 1st day of May, 1987.

H.B. 366

CHAPTER 116

AN ACT TO ALLOW DIGGING OF DITCHES IN BLADEN
COUNTY BELOW A CERTAIN LEVEL FOR STORM OR
DRAINAGE SEWER LINES.

The General Assembly of North Carolina enacts:

Section 1. Chapter 570, Session Laws of 1971, as amended by Chapter 252, Session Laws of 1973, is amended by adding the following immediately before the period at the end of Section 1: "or storm or drainage sewer lines".

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 1st day of May, 1987.

H.B. 443

CHAPTER 117

AN ACT TO PROVIDE THAT THE GENERAL LAW REGARDING
SETTING THE OFFICIAL BOND OF THE SHERIFF SHALL
APPLY TO GUILFORD COUNTY.

The General Assembly of North Carolina enacts:

Section 1. Section 1 of Chapter 370, Session Laws of 1953, is repealed.

Sec. 2. This act shall become effective July 1, 1987.

In the General Assembly read three times and ratified this the 1st day of May, 1987.

H.B. 469

CHAPTER 118

AN ACT TO AUTHORIZE CLAY, GRAHAM, JACKSON, AND
MACON COUNTIES TO CREATE TRAVEL AND TOURISM
AUTHORITIES AND TO REMIT THE COUNTY OCCUPANCY
TAX PROCEEDS TO THE AUTHORITIES TO PROMOTE
TRAVEL AND TOURISM.

The General Assembly of North Carolina enacts:

Section 1. The board of commissioners of a county that levies an occupancy tax under Chapter 969 of the 1985 Session Laws (Regular Session 1986) may adopt a resolution creating a county Travel and Tourism Authority, which shall be a public authority under the Local Government Budget and Fiscal Control Act. The resolution shall provide for the membership of the Authority including the members' qualifications and terms of office, and for the filling of vacancies on the Authority. The board of commissioners shall designate one member of the Authority as chair and shall determine the compensation, if any, to be paid to members of the Authority. The Authority shall meet at the call of the chair and shall adopt rules of procedure to govern its meetings. The finance officer for the taxing county shall be the ex officio finance officer of the Authority. The Authority shall promote travel and tourism in the taxing county. The Authority shall report quarterly and at the close of the fiscal year to the board of commissioners on its receipts and expenditures for the preceding quarter and for the year in such detail as the board may require.

Sec. 2. The board of commissioners of a county that creates a county Travel and Tourism Authority may, on a quarterly basis, remit the revenue in the county Travel and Tourism Fund to the Authority. The Authority may spend the funds remitted to it under this section only to promote travel and tourism in the county. The Authority may use no more than fifteen percent (15%) of the funds remitted to it under this section for administrative expenses.

Sec. 3. This act applies only to the following counties: Clay, Graham, Jackson, and Macon.

Sec. 4. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 1st day of May, 1987.

H.B. 481

CHAPTER 119

AN ACT TO CHANGE THE PROCEDURE USED BY WAYNE
COUNTY IN ALTERING THE STRUCTURE OF THE BOARD
OF COMMISSIONERS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 153A-60(4) is repealed.

Sec. 2. G.S. 153A-61 is repealed.

Sec. 3. G.S. 153A-64 reads as rewritten:

"§ 153A-64. Filing ~~results of election~~ copy of resolution.--If the ~~proposition~~ resolution is approved under G.S. ~~153A-61~~, 153A-60, a certified true copy of the resolution and a copy of the abstract of the ~~election~~ shall be filed with the Secretary of State, Supreme Court Library, and with the Legislative Library."

Sec. 4. This act applies to Wayne County only.

Sec. 5. This act is effective upon ratification, but only applies to resolutions approved on or before November 30, 1988.

In the General Assembly read three times and ratified this the 1st day of May, 1987.

H.B. 483

CHAPTER 120

AN ACT CONCERNING THE CONSTRUCTION OF A BUILDING
BY THE ALAMANCE-CASWELL AREA MENTAL HEALTH,
MENTAL RETARDATION AND SUBSTANCE ABUSE
AUTHORITY.

The General Assembly of North Carolina enacts:

Section 1. Notwithstanding the provisions of G.S. 143-128, 143-129, 143-131, and 143-132, the Alamance-Caswell Area Mental Health, Mental Retardation and Substance Abuse Authority may enter into contracts for the construction of a building to house the programs of Vocational Trades of Alamance, a sheltered workshop, in the manner and upon the terms and conditions the authority deems appropriate.

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 1st day of May, 1987.

H.B. 484

CHAPTER 121

AN ACT TO PERMIT THE CITY OF BURLINGTON TO CONVEY AT PRIVATE SALE TO THE ALLIED CHURCHES OF ALAMANCE COUNTY, INC., THE OLD CITY OF BURLINGTON POLICE BUILDING AND CERTAIN ADJACENT PROPERTIES.

The General Assembly of North Carolina enacts:

Section 1. Notwithstanding Article 12 of Chapter 160A of the General Statutes, the City of Burlington may convey at private sale with monetary consideration to The Allied Churches of Alamance County, Inc. any or all of its right, title, and interest to the following described property:

TRACT THREE

A certain tract or parcel of land in Burlington Township, Alamance County, North Carolina, adjoining the lands of Hall Avenue, Trade Street and Fisher Street and being further described as follows:

BEGINNING at an iron stake, said stake being at the intersection of the East right-of-way line of Hall Avenue and the North right-of-way line of Fisher Street and running thence with the right-of-way line of Hall Avenue, North 02 deg. 31' 12" East 394.38 feet to a point at the intersection of the East right-of-way line of Hall Avenue and the South right-of-way line of Trade Street; thence with the South right-of-way line of Trade Street, South 87 deg. 39' 48" East 9.31 feet to a point of curvature; thence along a curve to the right having a radius of 323.76 feet, an arc of 290.07 feet and a chord of South 61 deg. 59' 48" East 280.46 feet to a point of tangency; thence South 36 deg. 19' 48" East 46.73 feet to a point at the intersection of the South right-of-way line of Trade Street and the North right-of-way line of Fisher Street; thence with the right-of-way line of Fisher Street, South 53

deg. 23' 38" West 376.14 feet to the BEGINNING, and containing 1.542 Acres, more or less, as shown on City of Burlington Engineering Department, Drawing No. 2345-76, dated November 24, 1976, revised June 17, 1986.

TRACTS ONE AND TWO

A certain tract or parcel of land in Burlington Township, Alamance County, North Carolina, adjoining the lands of Fisher Street, Trade Street, Hall Avenue, Union Avenue, City of Burlington, E.S. Dameron and John L. Dameron, Margaret E. Brannock and Mrs. Earl B. Horner and being further described as follows:

BEGINNING at a point at the intersection of the North right-of-way line of Fisher Street and the North right-of-way line of Trade Street and running thence with the North right-of-way line of Trade Street, North 36 deg. 19' 48" West 46.44 feet to a point of curvature; thence along a curve to the left having a radius of 383.76 feet, an arc of 343.83 feet and a chord of North 61 deg. 59' 48" West 332.44 feet to a point of tangency; thence North 87 deg. 39' 48" West 9.13 feet to a point at the intersection of the North right-of-way line of Trade Street and the East right-of-way line of Hall Avenue; thence with the East right-of-way line of Hall Avenue, North 02 deg. 31' 12" East 2.61 feet to a point of curvature; thence along a curve to the right having a radius of 98.83 feet, an arch of 92.58 feet and a chord of North 29 deg. 21' 24" East 89.23 feet to a point in the South right-of-way line of Union Avenue; thence with the South right-of-way line of Union Avenue, North 56 deg. 11' 36" East 143.25 feet to an iron stake, said stake being a corner with City of Burlington in the South right-of-way line of Union Avenue; thence with the line of the City of Burlington, South 37 deg. 00' 22" East 190.43 feet to an iron stake; thence again with City of Burlington, North 53 deg. 23' 38" East 182.22 feet to a corner with City of Burlington and E.S. Dameron and John L. Dameron; thence with the line of E.S. Dameron and John L. Dameron, North 82 deg. 43' 18" East 46.83 feet to a corner with E.S. Dameron and John L. Dameron; thence again with E. S. Dameron and John L. Dameron, North 01 deg. 12' West 39.0 feet to an iron stake, said stake being a corner with Margaret E. Brannock in the line of E.S. Dameron and John L. Dameron; thence with the line of Margaret E. Brannock, North 87 deg. 54' East 92.80 feet to an iron stake in the line of Mrs. Earl B. Horner; thence with the line of Mrs. Earl B. Horner, South 02 deg. 05' East 181.95 feet to a point in the North right-of-way line of Fisher Street; thence with the North right-of-way line of Fisher Street, South 53 deg. 23' 38" West 297.11 feet to the BEGINNING and containing 2.325 Acres, more or less, and being as shown on City of Burlington, Engineering Division

Drawing No. 2345-76, dated November 24, 1976, and revised June 17, 1986.

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 1st day of May, 1987.

H.B. 485

CHAPTER 122

AN ACT TO ALLOW STATE LAW ENFORCEMENT OFFICERS TO PURCHASE ANY WEAPON WORN OR CARRIED BY THE OFFICER WHEN THE STATE LAW ENFORCEMENT AGENCY CHANGES THE TYPE OF WEAPONS USED.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-187.2 reads as rewritten:

"§ 20-187.2. Badges and service side arms of deceased or retiring members of State, city and county law-enforcement agencies; revolvers of active members.--(a) Surviving spouses, or in the event such members die unsurvived by a spouse, surviving children of members of North Carolina State, city and county law-enforcement agencies killed in the line of duty or who are members of such agencies at the time of their deaths, and retiring members of such agencies shall receive upon request and at no cost to them, the badge worn or carried by such deceased or retiring member. The governing body of a law-enforcement agency may, in its discretion, also award to a retiring member or surviving relatives as provided herein, upon request, the service side arm of such deceased or retiring members, at a price determined by such governing body, upon securing a permit as required by G.S. 14-402 et seq. or 14-409.1 et seq., or without such permit provided the ~~revolver~~ weapon shall have been rendered incapable of being fired. Governing body shall mean for county and local alcohol beverage control officers, the county or local board of alcoholic control; for all other law-enforcement officers with jurisdiction limited to a municipality or town, the city or town council; for all other law-enforcement officers with countywide jurisdiction, the board of county commissioners; for all State law-enforcement officers, the head of the department.

(b) Active members of North Carolina State law-enforcement agencies, upon change of type of ~~revolvers,~~ weapons, may purchase the ~~revolver~~ weapon worn or carried by such member at a price which shall be the average yield to the State from the sale of similar ~~revolvers~~ weapons during the preceding year."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 1st day of May, 1987.

H.B. 508

CHAPTER 123

AN ACT TO ALLOW ADDITIONAL TIME FOR THE CITY OF CHARLOTTE TO ADOPT CITY REGULATIONS FOR NEWLY ANNEXED AREAS OR EXTENSION OF THE CITY'S JURISDICTION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 160A-360(f) reads as rewritten:

"(f) When a city annexes, or a new city is incorporated in, or a city extends its jurisdiction to include, an area that is currently being regulated by the county, the county regulations and powers of enforcement shall remain in effect until (i) the city has adopted such regulations, or (ii) a period of ~~60~~ 90 days has elapsed following the annexation, extension or incorporation, whichever is sooner. During this period the city may hold hearings and take any other measures that may be required in order to adopt its regulations for the area."

Sec. 2. This act applies to the City of Charlotte only.

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 1st day of May, 1987.

S.B. 687

CHAPTER 124

AN ACT TO AMEND THE NORTH CAROLINA SHAREHOLDER PROTECTION ACT.

Whereas, takeovers and takeover attempts of corporations in North Carolina have been occurring with increasing frequency; and

Whereas, such activity can be highly disruptive to communities within North Carolina by causing, among other things, high unemployment and erosion of the State and local economy and tax base; and

Whereas, many of these corporations are not presently subject to the North Carolina Shareholder Protection Act since while substantially present in North Carolina they are chartered elsewhere; and

Whereas, these corporations offer employment to a large number of North Carolina citizens who pay income taxes, property and other taxes in this State; and

Whereas, these corporations pay significant amounts of income taxes to North Carolina; and

Whereas, these corporations pay substantial State and local property taxes; and

Whereas, these corporations pay substantial sales and use taxes in North Carolina; and

Whereas, these corporations provide their North Carolina employees with health, retirement and other benefits; and

Whereas, these corporations and their employees contribute greatly to community projects in North Carolina; and

Whereas, many unrelated businesses rely on these corporations to purchase goods and services; and

Whereas, North Carolina has a vital interest in providing to these corporations the benefits of the provisions of the North Carolina Shareholder Protection Act; Now, therefore,

The General Assembly of North Carolina enacts:

Section 1. G.S. 55-75, as enacted by Chapter 88, Session Laws of 1987, is amended by adding a new subdivision to read:

"(3a) 'Corporation' means

- (1) a corporation which is organized under the laws of and doing business in this State; or
- (2) a foreign corporation (i) which has its principal place of business in this State, (ii) which at the end of each of its last two fiscal years and at the end of its most recent fiscal quarter has more than forty percent (40%) of domestic fixed assets in this State, (iii) more than ten percent (10%) of the beneficial owners of the voting stock of which are resident in this State; and (iv) of which more than forty percent (40%) of the persons employed by such corporation in the United States are resident in this State."

Sec. 1.1. Article 7 of Chapter 55 of the General Statutes, as added by Chapter 88, Session Laws of 1987, is amended by adding a new section to read:

" § 55-79.1. *Conflict of laws.*--If any jurisdiction under the laws of which a foreign corporation is organized adopts any law containing provisions that are expressly inconsistent with the provisions of this Article as applicable to such foreign corporation, the provisions of this Article shall be inapplicable to such foreign corporation to the extent necessary to resolve such inconsistency."

Sec. 2. Article 7 of Chapter 55 of the General Statutes, as added by Chapter 88, Session Laws of 1987, is amended by adding a new section to read:

" § 55-80. *Severability.*--If any provision or clause of this Article or application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of this Chapter which can be given effect without the invalid provision or application, and to this end the provisions of this Chapter are declared to be severable."

Sec. 3. This act is effective upon ratification, but shall expire June 30, 1989.

In the General Assembly read three times and ratified this the 1st day of May, 1987.

S.B. 300

CHAPTER 125

AN ACT TO ALLOW BOTH WORD MESSAGES AND SYMBOLS
TO BE USED FOR PEDESTRIAN TRAFFIC CONTROL
SIGNALS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-172(a) reads as rewritten:

"(a) The Board of Transportation, with reference to State highways, and local authorities, with reference to highways under their jurisdiction, are hereby authorized to erect or install, at intersections or other appropriate places, special pedestrian control signals exhibiting the words or symbols 'WALK' or 'DON'T WALK' as a part of a system of traffic-control signals or devices."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 4th day of May, 1987.

S.B. 302

CHAPTER 126

AN ACT TO CHANGE THE SIGN MESSAGE FOR EXEMPT
CROSSINGS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-143.1(b)(5) reads as rewritten:

"(5) At an industrial or spur line railroad grade crossing marked with a sign reading 'Exempt Crossing,' which sign has been erected by or with the consent of the appropriate State or local authority."

Sec. 2 This act is effective upon ratification.

In the General Assembly read three times and ratified this the 4th day of May, 1987.

H.B. 108

CHAPTER 127

AN ACT TO EXTEND FROM THREE TO FIVE YEARS THE TIME FOR DEMANDING PROPERTY TAX REFUNDS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-381(a)(3) is amended by deleting the word "three" and substituting the word "five".

Sec. 2. This act shall become effective July 1, 1987, and applies to taxes levied on or after January 1, 1982. A taxpayer may ma

In the General Assembly read three times and ratified this the 4th day of May, 1987.

H.B. 296

CHAPTER 128

AN ACT TO CHANGE THE DISTRIBUTION OF THE NET PROFITS FROM THE MADISON AND THE REIDSVILLE ABC STORES.

The General Assembly of North Carolina enacts:

Section 1. Section 5 of Chapter 650 of the 1965 Session Laws as amended by Chapter 822 of the 1971 Session Laws is rewritten to read:

"Sec. 5. After the payment of all costs and operating expenses and after retaining sufficient and proper working capital, as determined by the City of Reidsville Board of Alcoholic Control, the said board shall allocate the net profits derived from the operation of the Alcoholic Beverage Control Stores, as determined by a quarterly audit, as follows:

five percent (5%) of the net profits to the Trustees of the Annie Penn Memorial Hospital, Reidsville, North Carolina;

five percent (5%) of the net profits to the Rockingham County Library;

five percent (5%) of the net profits to the General Fund of the City of Reidsville, to be used for law enforcement, and specifically, the enforcement of the Alcoholic Beverage Control laws;

seven percent (7%) of the net profits to the General Fund of Rockingham County, to be used for any proper governmental purpose; and

seventy-eight percent (78%) of the remaining net profits to the City of Reidsville, to be used for any proper governmental purpose."

Sec. 2. The second clause of the second sentence of Section 12 of Chapter 832 of the 1969 Session Laws as amended by Chapter 504 of the 1971 Session Laws is rewritten to read:

"if any alcoholic beverage control store is established in the Town of Madison, two and one-half percent (2 1/2%) of the net profits after the deduction of all costs including the amount expended for law enforcement shall be paid to the trustees of the Annie Penn Memorial Hospital, Reidsville, N. C., two and one-half percent (2 1/2%) of the net profits to the trustees of the Morehead Memorial Hospital, Eden, N.C., five percent (5%) of the net profits to the Rockingham County Library Fund, seven percent (7%) of the net profits to the General Fund of Rockingham County to be used for any proper governmental function, and seventy-eight percent (78%) of the remaining net profits, in addition to the five percent (5%) required by the preceding sentence to be used for law enforcement, to the General Fund of the Town of Madison to be used for any proper governmental function;".

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 4th day of May, 1987.

H.B. 394

CHAPTER 129**AN ACT TO CHANGE THE DISTRIBUTION OF PROFITS FROM THE ABC STORES IN SUNSET BEACH.**

The General Assembly of North Carolina enacts:

Section 1. Section 6 of Chapter 734 of the 1969 Session Laws reads as rewritten:

"Sec. 6. Out of the gross profits derived from the operation of said alcoholic beverage control stores and after the payment of all costs and operating expenses and after retaining sufficient and proper working capital, the amount thereof to be determined by the Town of Sunset Beach Board of Alcoholic Control, said board shall further expend an amount as necessary for law enforcement purposes of not less than five per cent (5%) nor more than ten per cent (10%) thereof, to be determined by quarterly audit, which amount shall supplement and not supplant the amount usually budgeted for such purposes by the Town of Sunset Beach. In the expenditure of said funds, the Town Board of

Alcoholic Control shall employ one or more persons as law enforcement officer or officers to be appointed by and directly responsible to the said board. The person or persons so appointed shall, after taking the oath prescribed by law for peace officers, have the same powers and authorities within Brunswick County as other peace officers. And any such person or persons so appointed, or any other peace officer while in hot pursuit of anyone found to be violating the prohibition laws of this State, shall have the right to go into any other county of the State and arrest such defendant therein so long as such hot pursuit of such person shall continue, and the common law of hot pursuit shall be applicable to said offenses and such officer or officers. Any law enforcement officer appointed by the said Board of Alcoholic Control and any other peace officer are hereby authorized, upon request of the sheriff or other lawful officer in any other county, to go into such other county and assist in suppressing a violation of the prohibition laws therein, and while so acting, shall have such powers as a peace officer as are granted to him in Brunswick County and be entitled to all the protection provided for said officer while acting in his own county.

Out of the net profits derived from the operation of said alcoholic beverage control stores, the Town of Sunset Beach Board of Alcoholic Control, shall, on a quarterly basis, pay over to the following named governing bodies, departments, boards, and agencies amounts equal to the percentages of the net profits which shall be expended by said governing bodies, departments, boards, and agencies for these purposes and none other as follows:

(a) Fifteen per cent (15%) to be given to the Shallotte Calabash Volunteer Rescue Squad, Inc.

(b) Sixty-five per cent (65%) to be retained by the Town Board of Alcohol Control in a special fund until sufficient funds are available from this and other sources for the construction of a new building by the board and then this percentage of funds are to be distributed to go to the general fund of the Town of Sunset Beach.

(c) Twenty per cent (20%) to go to the Board of Education of Brunswick County for use at the Union Primary School, the Shallotte School, Waccamaw Primary School, and West Brunswick High School."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 4th day of May, 1987.

AN ACT TO CHANGE THE METHOD BY WHICH PROPERTY OWNED BY A NONPROFIT HOMEOWNERS' ASSOCIATION IS TAXED.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-277.8 is rewritten to read:

"§ 105-277.8. *Taxation of property of nonprofit homeowners' association.*--(a) The value of real and personal property owned by a nonprofit homeowners' association shall be included in the appraisals of property owned by members of the association and shall not be assessed against the association if:

- (1) All property owned by the association is held for the use, benefit, and enjoyment of all members of the association equally;
- (2) Each member of the association has an irrevocable right to use and enjoy, on an equal basis, all property owned by the association, subject to any restrictions imposed by the instruments conveying the right or the rules, regulations, or bylaws of the association; and
- (3) Each irrevocable right to use and enjoy all property owned by the association is appurtenant to taxable real property owned by a member of the association.

The assessor may allocate the value of the association's property among the property of the association's members on any fair and reasonable basis.

(b) As used in this section, 'nonprofit homeowners' association' means a homeowners' association as defined in § 528(c) of the Internal Revenue Code."

Sec. 2. This act shall become effective January 1, 1988.

In the General Assembly read three times and ratified this the 4th day of May, 1987.

AN ACT TO AUTHORIZE THE TAKING OF BLACK BEARS IN CERTAIN COUNTIES.

The General Assembly of North Carolina enacts:

Section 1. The season for hunting black bears in Tyrrell and Washington Counties during 1987 shall be from November 9 to November 14, both dates inclusive.

Sec. 2. The seasons for hunting black bears in Tyrrell and Washington Counties in 1988 and succeeding years shall be established as authorized by Chapter 113 of the General Statutes; provided, however, there shall be no season for the year for hunting black bears in a county if the board of commissioners of that county adopts an ordinance stating the county's objection to the season that would otherwise be established for that year as authorized by Chapter 113 of the General Statutes.

Sec. 3. Section 3 of Chapter 582 of the 1979 Session Laws is amended by deleting the language "Perquimans, Tyrrell and Washington" and substituting "and Perquimans".

Sec. 4. G.S. 113-133.1(e) is amended in the chart by deleting the language: "; Session Laws 1979, Chapter 582" in the entry for Tyrrell County.

Sec. 5. G.S. 113-133.1(e) is amended in the chart by deleting the language: "; Session Laws 1979, Chapter 582" in the entry for Washington County.

Sec. 6. This act applies only to the counties of Tyrrell and Washington.

Sec. 7. This act shall become effective October 1, 1987.

In the General Assembly read three times and ratified this the 4th day of May, 1987.

H.B. 536

CHAPTER 132

AN ACT REGULATING HUNTING IN GREENE COUNTY.

The General Assembly of North Carolina enacts:

Section 1. Section 1 of Chapter 471 of the 1985 Session Laws reads as rewritten:

"Section 1. It is unlawful to ~~discharge a firearm from, onto, or across any~~ hunt with a loaded firearm from or on a public road or the right-of-way thereof. As used in this section, 'to hunt' means to hunt as that term is defined in G.S. 113-130(5a)."

Sec. 2. Section 2 of Chapter 219 of the 1975 Session Laws reads as rewritten:

"Sec. 2. It shall be unlawful to take ~~or kill or attempt to take or kill~~ deer with rifles, except ~~through the use of tree stands with at least an eight-foot elevation,~~ from a position elevated at least eight feet above the ground and not affixed to a motor vehicle. As used in this section, 'to take' means to take as that term is defined in G.S. 113-130(7)."

Sec. 3. Section 1 of Chapter 360 of the 1979 Session Laws reads as rewritten:

"Section 1. Any person who, between the hour of ~~ten~~ eleven o'clock p.m. on any day and one-half hour before sunrise on the following day, deliberately flashes or displays an artificial light from or attached to a motor-driven conveyance or from any means of conveyance attached to the motor-driven conveyance so as to cast the beam thereof beyond the surface of a roadway or in any field, woodland or forest in an area frequented or inhabited by game or nongame animals shall be guilty of a misdemeanor. Every person occupying the vehicle or conveyance at the time of the violation shall be deemed prima facie guilty of the violation as a principal."

Sec. 4. This act applies only to Greene County.

Sec. 5. This act shall become effective October 1, 1987.

In the General Assembly read three times and ratified this the 4th day of May, 1987.

H.B. 599

CHAPTER 133

AN ACT TO AMEND G.S. 113-273 WITH RESPECT TO WILD
TURKEYS HELD UNDER A GAME BIRD PROPAGATION
LICENSE.

The General Assembly of North Carolina enacts:

Section 1. Subsection (h) of G.S. 113-273 is amended by deleting the last sentence and by substituting the following: "Wild turkey acquired or raised under a game bird propagation license shall be confined in a cage or pen approved by the Wildlife Resources Commission and no such wild turkey shall be released for any purpose or allowed to range free. It is a misdemeanor punishable by a fine of not less than one hundred dollars (\$100.00) in addition to such other punishment the court may impose in its discretion to sell wild turkey or ruffed grouse for food purposes, to sell quail other than lawfully acquired pen-raised quail for food purposes, or to release or allow wild turkey to range free."

Sec. 2. This act shall become effective October 1, 1987.

In the General Assembly read three times and ratified this the 4th day of May, 1987.

H.B. 602

CHAPTER 134

AN ACT TO AMEND G.S. 113-291.1 RELATING TO THE
MANNER OF TAKING MIGRATORY GAME BIRDS.

The General Assembly of North Carolina enacts:

Section 1. Subsection (f) of G.S. 113-291.1 is amended by adding a new sentence at the end to read:

"In the absence of regulations of the Wildlife Resources Commission to the contrary, the regulations of the United States Department of the Interior prohibiting the use of rifles, unplugged shotguns, toxic shot and sinkboxes in taking migratory game birds in North Carolina shall apply, and any violation of such federal regulations is unlawful."

Sec. 2. This act shall become effective on October 1, 1987.

In the General Assembly read three times and ratified this the 4th day of May, 1987.

H.B. 660

CHAPTER 135

AN ACT TO AUTHORIZE THE ABC COMMISSION TO CLOSE AN INSOLVENT ABC SYSTEM.

The General Assembly of North Carolina enacts:

Section 1. G.S. 18B-801 is amended by adding a new subsection to read:

"(d) Insolvent ABC System. If an ABC system is insolvent, the local board may apply to the Commission for an order to close the system. Upon receipt of an application, or upon its own motion, the Commission shall investigate the system, and if it finds that further operation of the ABC stores will not be profitable, it may order the system closed. If the Commission orders a local system to close, the Commission may:

- (1) After consultation with the local board, its creditors, and other interested parties, schedule a phase out of the system's business activities;
- (2) Represent the local board in negotiations with creditors and other interested parties;
- (3) Require an accounting or auditing of the local system;
- (4) Take possession or arrange for the disposition of any liquor for which the local board has not paid;
- (5) Apply to the Superior Court to be appointed a receiver for the local board with all powers and duties of a receiver for a corporation under Article 38 of Chapter 1 of the General Statutes, except that the Commission shall not be required to post the bond required by G.S. 1-504; or
- (6) Take any other reasonable steps to promote an orderly closing of the system."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 4th day of May, 1987.

H.B. 717

CHAPTER 136

AN ACT TO MAKE TECHNICAL CHANGES IN THE ABC STATUTES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 18B-203(a) is amended by changing the period at the end of subdivision (16) to a semicolon, and adding the following new subdivision (17) to read as follows:

"(17) Provide for the distribution of spirituous liquor to armed forces installations within this State for resale on the installation."

Sec. 2. G.S. 18B-204(a)(3) is amended by changing the period at the end of that subdivision to a comma and adding the following words:

"and by contracting for receipt, storage and distribution of spirituous liquor by an independent contractor, by negotiated contract or by the use of procedures for purchase and contract by State agencies, for the operation of that warehouse."

Sec. 3. G.S. 18B-404(b) is amended by deleting the first sentence and adding a new sentence at the end of that subsection to read:

"Otherwise a licensed establishment may obtain a mixed beverages purchase-transportation permit only from the local board for the jurisdiction in which it is located."

Sec. 4. G.S. 18B-405 is amended by deleting from that section the words "from a wholesaler's place of business to his licensed premises" and inserting in lieu thereof the words "in the course of his business".

Sec. 5. G.S. 18B-603(c)(3) is rewritten to read:

"(3) The Commission may issue brown-bagging permits to restaurants, hotels, and community theatres in the county in which the election was held, whether the election was held by the county or by a city or other jurisdiction within the county. Brown-bagging permits may not be issued, however, for restaurants, hotels, or community theatres in any jurisdiction in which the sale of mixed beverages has been approved."

Sec. 6. G.S. 18B-603(d)(4) is rewritten to read:

"(4) The Commission may issue brown-bagging permits for private clubs but may no longer issue and may not renew brown-bagging permits for restaurants, hotels, and community theatres. A restaurant, hotel, or community theatre may not be issued a mixed beverage

permit under subdivision (1) until it surrenders its brown-bagging permit."

Sec. 7. G.S. 18B-900(c)(2) is amended by rewriting that subdivision to read as follows: "(2) Each member of a firm, association or general partnership;"

Sec. 8. G.S. 18B-900(c) is further amended by adding a new subdivision (2a) that reads as follows: "(2a) Each general partner in a limited partnership;"

Sec. 9. G.S. 18B-1115(g) is amended by inserting after the word "State" and before the word "warehouse" the words "or a local board".

Sec. 10. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 4th day of May, 1987.

S.B. 37

CHAPTER 137

AN ACT TO EXPEDITE PROCEEDINGS INVOLVING CHILD VICTIMS AND WITNESSES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 15A-701(b)(7) is amended in subdivision (7) as follows:

(1) by adding a new sub-subdivision e. to read:

"e. Whether the case involves physical or sexual child abuse when a victim or witness is under 16 years of age, and whether further delay would have an adverse impact on the well-being of the child." and

(2) by deleting the word "and" at the end of sub-subdivision a. and substituting a semicolon for the period at the end of sub-subdivision d. and by adding the word "and" at the end of sub-subdivision d. after the semicolon.

Sec. 2. This act shall be effective October 1, 1987.

In the General Assembly read three times and ratified this the 5th day of May, 1987.

H.B. 12

CHAPTER 138

AN ACT TO PROVIDE FOR CODED BILL DRAFTS, WHERE THE LAW TO BE AMENDED IS SET OUT SHOWING THE DELETIONS AND INSERTIONS PROPOSED BY THE BILL.

The General Assembly of North Carolina enacts:

Section 1. Chapter 120 of the General Statutes is amended by adding a new section to read:

"§ 120-20.1. *Coded bill drafting.*-- (a) Whenever in any act:

(1) it is stated that a law 'reads as rewritten:'; and

(2) the law is set out showing material struck through or underlined, or both

the material struck through is being deleted from the existing law, and the material underlined is being added to the existing law.

(b) Notwithstanding subsection (a) of this section, underlining in a column heading is existing law, and a double underline shows a column heading being added to existing law.

(c) As used in this section 'act' and 'law' also includes joint and simple resolutions.

(d) This section applies to acts ratified on or after February 9, 1987."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 5th day of May, 1987.

H.B. 78

CHAPTER 139

AN ACT TO ALLOW THE JUDGE IN SENTENCING FOR DRIVING WHILE IMPAIRED TO CREDIT THE DEFENDANT WITH TIME SERVED AS AN INPATIENT IN A TREATMENT FACILITY.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-179 is amended by adding the following new subsection to read:

"(k1) Credit for Inpatient Treatment. Pursuant to G.S. 15A-1351(a), the judge may order that a term of imprisonment imposed as a condition of special probation under any level of punishment be served as an inpatient in a facility operated or licensed by the State for the treatment of alcoholism or substance abuse where the defendant has been accepted for admission or commitment as an inpatient. The defendant shall bear the expense of any treatment. The judge may impose restrictions on the defendant's ability to leave the premises of the treatment facility and require that the defendant follow the rules of the treatment facility. The judge may credit against the active sentence imposed on a defendant the time the defendant was an inpatient at the treatment facility, provided such treatment occurred after the commission of the offense for which the defendant is being sentenced. The credit may not be used more than once during the seven-year

period immediately preceding the date of the offense. This section shall not be construed to limit the authority of the judge in sentencing under any other provisions of law."

Sec. 2. This act is effective upon ratification, and applies to pending cases.

In the General Assembly read three times and ratified this the 5th day of May, 1987.

H.B. 305

CHAPTER 140

AN ACT TO AUTHORIZE YANCEY COUNTY TO LEVY A ROOM OCCUPANCY AND TOURISM DEVELOPMENT TAX.

The General Assembly of North Carolina enacts:

Section 1. Occupancy Tax. (a) Authorization and Scope. The Yancey County Board of Commissioners may, by resolution, after not less than 10 days' public notice and a public hearing pursuant thereto, levy a room occupancy tax of three percent (3%) of the gross receipts derived from the rental of any room, lodging, or similar accommodation furnished by a hotel, motel, inn, or similar place of business within the county that is subject to sales tax imposed by the State or local sales tax laws. This tax does not apply to accommodations furnished by educational, religious, or summer camp organizations.

(b) Collection. Every operator of a business subject to the tax levied under this act shall, on and after the effective date of the levy of the tax, collect the tax as part of the charge for furnishing a taxable accommodation. The tax shall be stated and charged separately from the sales records and shall be paid by the purchaser to the operator of the business as trustee for and on account of the county. The tax shall be added to the sales price and shall be passed on to the purchaser. The county shall design, print, and furnish to all appropriate businesses the necessary forms for filing returns with instructions to ensure the full and proper collection of the tax.

(c) Administration. The county shall administer the tax levied under this act. The tax shall be due and payable to the county in monthly installments on or before the 15th day of the month following the month in which the tax is collected. Every person, firm, corporation, or association liable for the tax shall, on or before the 15th day of each month, prepare and submit a return on a form prescribed by the county. The return shall state the total gross receipts derived in the preceding month from rentals subject to the tax. A return filed with the county finance officer under this act is not a

public record as defined by G.S. 132-1 and may not be disclosed except as required by law.

(d) Penalties. Any person, firm, corporation, or association subject to this tax who fails or refuses to file the required return shall pay a penalty of ten dollars (\$10.00) for each day's failure to file. In case of failure or refusal to file the return or to pay the tax due for a period of 30 days after the time required for filing the return or for paying the tax, there shall be an additional tax, as a penalty, of five percent (5%) of the tax due for each additional month or fraction thereof until the tax due has been paid.

Any person, firm, corporation, or association that willfully attempts in any manner to evade the tax imposed by this act or who willfully fails to pay the tax or make and file a proper return shall be guilty of a misdemeanor punishable by a fine not to exceed one thousand dollars (\$1,000) and/or imprisonment not to exceed six months, in addition to any other penalties provided by law. The Board of Commissioners may, however, for good cause shown, compromise or forgive the penalties imposed by this subsection.

(e) Distribution and Use of Revenue. The Yancey County Board of Commissioners shall, on a quarterly basis, remit the net proceeds of the tax to the Yancey County Chamber of Commerce (hereinafter referred to as the Chamber), which shall administer the funds through its Tourism and Travel Development Committee. The Chamber may spend the funds remitted to it for the following purposes only:

- (1) Direct advertising for visitor promotions, conventions, travel, and tourism in Yancey County, including outdoor advertising, print media, broadcast media, and brochures;
- (2) Marketing and promotions expenses, including test market programs, consultant fees, entertainment, housing expenses, travel expenses, and registration fees; and
- (3) Other expenses that aid and encourage visitor promotions, conventions, travel, and tourism in Yancey County.

(f) Effective Date of Levy. A tax levied under this act shall become effective on the date specified in the resolution levying the tax, which date shall be the first day of the second calendar month after the date the resolution is adopted.

(g) Repeal. A tax levied under this act may be repealed by resolution of the Yancey County Board of Commissioners. Repeal of the tax levied under this act shall become effective on the first day of any designated month after the end of the county's fiscal year during

which the repeal resolution is adopted. Repeal of a tax levied under this act shall not affect liability for taxes that attached before the effective date of repeal, nor does it affect rights of refund that accrued before the effective date of the repeal or any other rights or liabilities incurred prior to the effective date of the repeal.

Sec. 2. Tourism and Travel Development Committee of the Yancey County Chamber of Commerce. (a) Authorization. A resolution levying a tax under this act shall also authorize the Board of Directors of the Yancey County Chamber of Commerce, through its Tourism and Travel Development Committee, to act as trustee for and on account of the county as provided herein. The Chamber Board shall approve all expenditures under this act as trustee for the county.

(b) Administration. The Chamber shall administer the funds on recommendation of its Tourism and Travel Development Committee as constituted under the corporate bylaws of the Chamber, and including counsel of two ex officio members of the Committee to be appointed by the Yancey County Board of Commissioners.

(c) Duties. Recommendations of this Committee and expenditures by the Chamber through its Board of Directors shall be consistent with the intent of this act to promote and encourage travel and tourism in Yancey County. The Chamber may contract with any agency, firm, or person to advise or assist in such promotion, and funds received under this act may be used for that purpose.

(d) Accountability. The Chamber shall report at the close of the fiscal year to the Board of County Commissioners on its receipts and expenditures for the preceding year in such detail as the board may require.

(e) Review of Levy. The county shall periodically conduct a review of this levy and of the disbursement of funds as provided herein.

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 5th day of May, 1987.

H.B. 420

CHAPTER 141

AN ACT TO AUTHORIZE MITCHELL COUNTY TO LEVY A ROOM OCCUPANCY AND TOURISM DEVELOPMENT TAX.

The General Assembly of North Carolina enacts:

Section 1. Occupancy tax. (a) Authorization and scope. The Mitchell County Board of Commissioners may by resolution, after not less than 10 days' public notice and after a public hearing held

pursuant thereto, levy a room occupancy tax of three percent (3%) of the gross receipts derived from the rental of any room, lodging, or similar accommodation furnished by a hotel, motel, inn, or similar place within the county that is subject to sales tax imposed by the State under G.S. 105-164.4(3). This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations.

(b) Collection. Every operator of a business subject to the tax levied under this section shall, on and after the effective date of the levy of the tax, collect the tax. This tax shall be collected as part of the charge for furnishing a taxable accommodation. The tax shall be stated and charged separately from the sales records, and shall be paid by the purchaser to the operator of the business as trustee for and on account of the county. The tax shall be added to the sales price and shall be passed on to the purchaser instead of being borne by the operator of the business. The county shall design, print, and furnish to all appropriate businesses and persons in the county the necessary forms for filing returns and instructions to ensure the full collection of the tax. An operator of a business who collects the occupancy tax levied under this section may deduct from the amount remitted to the county a discount of three percent (3%) of the amount collected.

(c) Administration. The county shall administer a tax levied under this section. A tax levied under this section is due and payable to the county finance officer in monthly installments on or before the 15th day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the 15th day of each month, prepare and render a return on a form prescribed by the county. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied.

A return filed with the county finance officer under this section is not a public record as defined by G.S. 132-1 and may not be disclosed except as required by law.

(d) Penalties. A person, firm, corporation, or association who fails or refuses to file the return required by this section shall pay a penalty of ten dollars (\$10.00) for each day's omission. In case of failure or refusal to file the return or pay the tax for a period of 30 days after the time required for filing the return or for paying the tax, there shall be an additional tax, as a penalty, of five percent (5%) of the tax due in addition to any other penalty, with an additional tax of

five percent (5%) for each additional month or fraction thereof until the tax is paid.

Any person who willfully attempts in any manner to evade a tax imposed under this section or who willfully fails to pay the tax or make and file a return shall, in addition to all other penalties provided by law, be guilty of a misdemeanor and shall be punishable by a fine not to exceed one thousand dollars (\$1,000), imprisonment not to exceed six months, or both. The Board of Commissioners may, for good cause shown, compromise or forgive the penalties imposed by this subsection.

(e) Distribution and use of tax revenue. Mitchell County shall, on a quarterly basis, remit the net proceeds of the occupancy tax to the Mitchell County Chamber of Commerce. The Chamber of Commerce may spend funds remitted to it under this subsection only to promote travel and tourism in Mitchell County, to sponsor tourist-oriented events and activities in Mitchell County, and to finance tourist-related capital projects in Mitchell County. As used in this subsection, "net proceeds" means gross proceeds less the cost to the county of administering and collecting the tax, as determined by the finance officer.

(f) Effective date of levy. A tax levied under this section shall become effective on the date specified in the resolution levying the tax. That date must be the first day of a calendar month, however, and may not be earlier than the first day of the second month after the date the resolution is adopted.

(g) Repeal. A tax levied under this section may be repealed by a resolution adopted by the Mitchell County Board of Commissioners. Repeal of a tax levied under this section shall become effective on the first day of a month and may not become effective until the end of the fiscal year in which the repeal resolution was adopted. Repeal of a tax levied under this section does not affect a liability for a tax that was attached before the effective date of the repeal, nor does it affect a right to a refund of a tax that accrued before the effective date of the repeal.

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 5th day of May, 1987.

H.B. 429

CHAPTER 142

AN ACT TO AUTHORIZE THE LEVY OF A ROOM
OCCUPANCY AND TOURISM DEVELOPMENT TAX IN
AVERASBORO TOWNSHIP IN HARNETT COUNTY.

The General Assembly of North Carolina enacts:

Section 1. Occupancy Tax. (a) Authorization and scope. The Harnett County Board of Commissioners may by resolution, after not less than ten (10) days' public notice and after a public hearing held pursuant thereto, levy a room occupancy tax in an amount not to exceed three percent (3%) of the gross receipts derived from the rental of any room, lodging, or similar accommodation furnished by a hotel, motel, inn, or similar place within Averagesboro Township that is subject to sales tax imposed by the State under G.S. 105-164.4(3). This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious institutions or organizations.

(b) Collection. Every operator of a business subject to the tax levied under this act shall, on and after the effective date of the levy of the tax, collect the tax. This tax shall be collected as part of the charge for furnishing a taxable accommodation. The tax shall be stated and charged separately from the sales records, and shall be paid by the purchaser to the operator of the business as trustee for and on account of the township. The tax shall be added to the sales price and shall be passed on to the purchaser instead of being borne by the operator of the business. As compensation for collecting a tax levied under this act, the operator of a business subject to the tax may retain three percent (3%) of the total tax collected by the operator each month.

(c) Administration. For the purpose of levying and administering the tax authorized by this act, Averagesboro Township shall be a body politic and corporate and shall have the power to carry out the provisions of this act. The Harnett County Board of Commissioners shall serve, ex officio, as the governing body of the Township, and the officers of the board of commissioners shall serve as the officers of the governing body of the township. A simple majority of the governing body constitutes a quorum, and approval by a majority of those present is sufficient to determine any matter before the governing body, if a quorum is present.

The Harnett County Board of Commissioners, as the governing body of Averagesboro Township, shall administer a tax levied under this act. A tax levied under this act is due and payable to the county finance officer in monthly installments on or before the 15th day of the month following the month in which the tax accrues. The township shall design, print, and furnish to all appropriate businesses and persons in the township the necessary forms for filing returns and instructions to ensure the full collection of the tax. Every person, firm, corporation, or association liable for the tax shall, on or before the 15th day of each month, prepare and render a return on a form prescribed by the township. The return shall state the total gross

receipts derived in the preceding month from rentals upon which the tax is levied.

A return filed with the county finance officer under this act is not a public record as defined by G.S. 132-1 and may not be disclosed except as required by law.

(d) Penalties. A person, firm, corporation, or association who fails or refuses to file the return required by this act shall pay a penalty of ten dollars (\$10.00) for each day's omission. In case of failure or refusal to file the return or pay the tax for a period of thirty (30) days after the time required for filing the return or for paying the tax, there shall be an additional tax, as a penalty, of five percent (5%) of the tax due for each additional month or fraction thereof until the tax is paid.

Any person who willfully attempts in any manner to evade a tax imposed under this act or who willfully fails to pay the tax or make and file a return shall, in addition to all other penalties provided by law, be guilty of a misdemeanor and shall be punishable by a fine not to exceed one thousand dollars (\$1,000), imprisonment not to exceed six months, or both. The board of commissioners may, for good cause shown, compromise or forgive the penalties imposed by this subsection.

(e) Distribution and use of tax revenue. The township shall, on a quarterly basis, remit the net proceeds of the occupancy tax to the Averagesboro Township Tourism Development Authority. The Authority may spend funds remitted to it under this subsection only to develop, promote, and advertise travel and tourism in Averagesboro Township, to sponsor tourist-oriented events and activities for Averagesboro Township, to operate and maintain museums and historic sites throughout Averagesboro Township, and to purchase, operate, and maintain a convention facility for Averagesboro Township. As used in this subsection, "net proceeds" means gross proceeds less the cost to the township of administering and collecting the tax, as determined by the finance officer.

(f) Effective date of levy. A tax levied under this act shall become effective on the date specified in the resolution levying the tax. That date must be the first day of a calendar month, however, and may not be earlier than the first day of the second month after the date the resolution is adopted.

(g) Repeal. A tax levied under this act may be repealed by a resolution adopted by the Harnett County Board of Commissioners. Repeal of a tax levied under this act does not affect a liability for a tax that attached before the effective date of the repeal, nor does it affect a

right to a refund of a tax that accrued before the effective date of the repeal.

Sec. 2. Tourism Development Authority. (a) Appointment and membership. When the board of commissioners adopts a resolution levying a room occupancy tax under this act, it shall also adopt a resolution creating an Averasboro Township Tourism Development Authority, which shall be a public authority under the Local Government Budget and Fiscal Control Act. There shall be seven members of the Authority as follows:

- (1) Two members appointed by the board of commissioners from nominations submitted by the Dunn Area Chamber of Commerce, one who is a hotel or motel operator from Averasboro Township and one who is a representative of the travel industry;
- (2) The Harnett County Manager, to serve ex officio;
- (3) The Harnett County Commissioner representing Averasboro Township, to serve ex officio;
- (4) The President of the Dunn Area Chamber of Commerce, to serve ex officio;
- (5) The Vice President of Economic and Industrial Development of the Dunn Area Chamber of Commerce, to serve ex officio; and
- (6) The City Manager of the Town of Dunn, to serve ex officio.

The members appointed by the board of commissioners shall serve for a term of one year; vacancies shall be filled in the same manner as the initial appointments. All of the members, including those who serve ex officio, shall be voting members of the Authority. A majority of the members shall constitute a quorum for the transaction of business and an affirmative vote of the majority of the members present at a meeting of the Authority shall be required to constitute action of the Authority. The board of commissioners shall designate one member of the Authority as chair and shall determine the compensation, if any, to be paid to members of the Authority.

The Authority shall meet at the call of the chair and shall adopt rules of procedure to govern its meetings. The Finance Officer for Harnett County shall be the ex officio finance officer of the Authority.

(b) Duties. The authority shall develop, promote, and advertise travel and tourism in Averasboro Township, sponsor tourist-oriented events and activities for Averasboro Township, operate and maintain museums and historic sites throughout Averasboro Township, and purchase, operate, and maintain a convention facility for Averasboro Township.

(c) Reports. The Authority shall report quarterly and at the close of the fiscal year to the board of county commissioners on its receipts and expenditures for the preceding quarter and for the year in such detail as the board may require.

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 5th day of May, 1987.

H.B. 540

CHAPTER 143

AN ACT TO AUTHORIZE PITT COUNTY TO LEVY A ROOM OCCUPANCY AND TOURISM DEVELOPMENT TAX.

The General Assembly of North Carolina enacts:

Section 1. Occupancy tax. (a) Authorization and scope. The Pitt County Board of Commissioners may by resolution, after not less than ten (10) days' public notice and after a public hearing held pursuant thereto, levy a room occupancy tax of three percent (3%) of the gross receipts derived from the rental of any room, lodging, or similar accommodation furnished by a hotel, motel, inn, or similar place within the county that is subject to sales tax imposed by the State under G.S. 105-164.4(3). This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, benevolent, or religious organizations when furnished in furtherance of their nonprofit purpose.

(b) Collection. Every operator of a business subject to the tax levied under this section shall, on and after the effective date of the levy of the tax, collect the tax. This tax shall be collected as part of the charge for furnishing a taxable accommodation. The tax shall be stated and charged separately from the sales records, and shall be paid by the purchaser to the operator of the business as trustee for and on account of Pitt County. The tax shall be added to the sales price and shall be passed on to the purchaser instead of being borne by the operator of the business. The Pitt County Tax Collector shall design, print, and furnish to all appropriate businesses and persons in the county the necessary forms for filing returns and instructions to ensure the full collection of the tax.

(c) Administration. The county shall administer a tax levied under this section. A tax levied under this section is due and payable to the county finance officer in monthly installments on or before the 15th day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall,

on or before the 15th day of each month, prepare and render a return on a form prescribed by the county. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied.

A return filed with the county finance officer under this section is not a public record as defined by G.S. 132-1 and may not be disclosed except as required by law.

(d) Penalties. A person, firm, corporation, or association who fails or refuses to file the return required by this section shall pay a penalty of ten dollars (\$10.00) for each day's omission. In case of failure or refusal to file the return or pay the tax for a period of thirty (30) days after the time required for filing the return or for paying the tax, there shall be an additional tax, as a penalty, of five percent (5%) of the tax due in addition to any other penalty, with an additional tax of five percent (5%) for each additional month or fraction thereof until the tax is paid.

Any person who willfully attempts in any manner to evade a tax imposed under this section or who willfully fails to pay the tax or make and file a return shall, in addition to all other penalties provided by law, be guilty of a misdemeanor and shall be punishable by a fine not to exceed one thousand dollars (\$1,000), imprisonment not to exceed six months, or both. The Board of Commissioners may, for good cause shown, compromise or forgive the penalties imposed by this subsection.

(e) Distribution and use of tax revenue. Pitt County shall, on a quarterly basis, remit the net proceeds of the occupancy tax to the Pitt-Greenville Convention and Visitors Authority. The Authority may spend funds remitted to it under this subsection only for promotion, activities, and programs aiding and encouraging travel, tourism, and conventions in Pitt County. As used in this subsection, "net proceeds" means gross proceeds less the cost to the county of administering and collecting the tax, as determined by the finance officer.

(f) Effective date of levy. A tax levied under this section shall become effective on the date specified in the resolution levying the tax. That date must be the first day of a calendar month, however, and may not be earlier than the first day of the second month after the date the resolution is adopted.

(g) Repeal. A tax levied under this section may be repealed by a resolution adopted by the Pitt County Board of Commissioners. Repeal of a tax levied under this section shall become effective on the first day of a month and may not become effective until the end of the fiscal year in which the repeal resolution was adopted. Repeal of a tax levied under this section does not affect a liability for a tax that was

attached before the effective date of the repeal, nor does it affect a right to a refund of a tax that accrued before the effective date of the repeal.

Sec. 2. Pitt-Greenville Convention and Visitors Authority. (a) Appointment and membership. When the Pitt County Board of Commissioners adopts a resolution levying a room occupancy tax under this act, it shall also adopt an ordinance establishing the Pitt-Greenville Convention and Visitors Authority, which shall be a public authority under the Local Government Budget and Fiscal Control Act. The Authority shall be governed by a Board of Directors consisting of 11 members as follows:

- (1) Four owners or operator of hotels, motels, or other taxable accommodations, two of whom shall be appointed by the Pitt County Board of Commissioners and two of whom shall be appointed by the Greenville City Council.
- (2) Two individuals who are directly involved in a tourist or convention-related business but do not own or operate a hotel, motel, or other taxable accommodation, one appointed by the Pitt County Board of Commissioners and one appointed by the Greenville City Council.
- (3) Two residents of Greenville, appointed by the Greenville City Council, and two residents of Pitt County but not of Greenville, appointed by the Pitt County Board of Commissioners, none of whom is involved in a tourist or convention-related business or owns or operates a hotel, motel, or other taxable accommodation.
- (4) One individual who is a member of the Pitt-Greenville Chamber of Commerce, appointed by the Chairman of the Board of Directors of the Pitt-Greenville Chamber of Commerce.

The Board of Commissioners shall designate one member of the Authority as chair and shall determine the compensation, if any, to be paid to members of the Authority. The Authority shall meet at the call of the chair and shall adopt rules of procedure to govern its meetings. The Finance Officer for Pitt County shall be the ex officio finance officer of the Authority.

(b) Powers and duties. The Authority may contract with any person, firm, or agency to advise and assist it in the promotion of activities and programs aiding and encouraging travel, tourism, and conventions. The Authority shall prepare an annual budget based on anticipated revenues and shall submit the budget to the Pitt County Manager and Greenville City Manager for processing and approval through the regular budget procedure of the County and City. The Authority shall make quarterly reports to the Pitt County Board of

Commissioners and the Greenville City Council detailing its revenues, expenditures, and activities. An annual audit report shall be conducted and distributed to the County and the City by the Authority.

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 5th day of May, 1987.

H.B. 188

CHAPTER 144

AN ACT TO CLARIFY THE LAW REGARDING DETENTION OF
A JUVENILE BOUND OVER TO SUPERIOR COURT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 7A-611 is rewritten as follows:

"§ 7A-611. *Right to pretrial release; detention.*--Once the order of transfer has been entered, the juvenile has the right to pretrial release as provided in G.S. 15A-533 and 15A-534. Pending release under this Article, the judge shall order that the juvenile be detained in a local detention home as defined by G.S. 7A-517(15) or a regional detention home as defined by G.S. 7A-517(26) while awaiting trial. The judge may order the juvenile to be held in a holdover facility as defined by G.S. 7A-517(16) at any time the presence of the juvenile is required in court for pretrial hearings or trial, if the judge finds that it would be inconvenient to return the juvenile to the local or regional detention home.

Should the juvenile be found guilty, or enter a plea of guilty or no contest to criminal offenses in superior court and the juvenile receives an active sentence, then immediate transfer to the Department of Correction shall be ordered. Until such time as the juvenile is transferred to the Department of Correction, the juvenile may be detained in a holdover facility as defined by G.S. 7A-517(16). The juvenile may not be detained in a local detention home as defined by G.S. 7A-517(15) or a regional detention home as defined by G.S. 7A-517(26) pending transfer to the Department of Correction. The juvenile may be kept by the Department of Correction as a safekeeper until the juvenile is placed in an appropriate correctional program."

Sec. 2. This act shall become effective October 1, 1987.

In the General Assembly read three times and ratified this the 6th day of May, 1987.

S.B. 97

CHAPTER 145

AN ACT TO ENSURE THAT THE PUBLIC HAS NOTICE OF ALL RESTAURANTS' HEALTH RATINGS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 130A-249 is amended in the fourth sentence by deleting the period and by substituting the language "or upon picking up food prepared inside but received and paid for outside the facility through delivery windows or other delivery devices. If a single facility has one or more outside delivery service stations and an internal delivery system, that facility shall have a grade card posted where it may be readily visible upon entering the facility and one posted where it may be readily visible in each delivery window or delivery device upon picking up the food outside the facility."

Sec. 2. G.S. 130A-249 is further amended in the third and fifth sentences by adding immediately after the word "card" the phrase "or cards".

Sec. 3. This act shall become effective January 1, 1988.

In the General Assembly read three times and ratified this the 7th day of May, 1987.

S.B. 193

CHAPTER 146

AN ACT TO EXPAND THE TRAFFIC CONTROL AUTHORITY OF FIREMEN AND RESCUE SQUAD MEMBERS IN EMERGENCY SITUATIONS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-114.1(b) is rewritten to read:

"(b) In addition to other law enforcement or traffic control officers, uniformed regular and volunteer firemen and uniformed regular and volunteer members of a rescue squad may direct traffic and enforce traffic laws and ordinances at the scene of or in connection with fires, accidents, or other hazards in connection with their duties as firemen or rescue squad members. Except as herein provided, firemen and members of rescue squads shall not be considered law enforcement or traffic control officers."

Sec. 2. G.S. 69-39.1(b) is amended by inserting after the words "suppression of the reported fire" and before the words "by the department or the fireman" the phrase "or to the direction of traffic or enforcement of traffic laws or ordinances at the scene of or in connection with a fire, accident, or other hazard".

Sec. 3. G.S. 20-114.1 is amended by adding a new subsection to read:

"(b1) Any member of a rural volunteer fire department or volunteer rescue squad who receives no compensation for services shall not be liable in civil damages for any acts or omissions relating to the direction of traffic or enforcement of traffic laws or ordinances at the scene of or in connection with a fire, accident, or other hazard unless such acts or omissions amount to gross negligence, wanton conduct, or intentional wrongdoing."

Sec. 4. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 7th day of May, 1987.

S.B. 215

CHAPTER 147

AN ACT TO RAISE THE PROCESSING FEE FOR BAD CHECKS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 25-3-512 is amended by deleting "ten dollars (\$10.00)" and substituting "fifteen dollars (\$15.00)".

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 7th day of May, 1987.

H.B. 241

CHAPTER 148

AN ACT TO AMEND CHAPTER 102 OF THE GENERAL STATUTES BY CORRECTION OF THE DESCRIPTION OF THE OFFICIAL SURVEY BASE FOR THE STATE OF NORTH CAROLINA.

The General Assembly of North Carolina enacts:

Section 1. G.S. 102-1.1, as the same appears in the 1985 Replacement Volume 2D of the General Statutes, is amended by deleting the words "World Reference Ellipsoid" on line 10, and substituting the words "Geodetic Reference System (GRS 80 Ellipsoid)"; by adding the following sentence after "grid" on line 16:

"The U.S. Survey Foot, 1 meter = 39.37 inches or 3.2808333333 feet, shall be used as a conversion factor."; by deleting the number "600,000" on line 19, and substituting therefor the number "609,601.22"; and by adding the following new sentence at the end of the section:

"Whenever plane coordinates are used in the description or identification of surface area or location within this State, the

coordinates shall be identified as 'NAD 83', indicating North American Datum of 1983, or as 'NAD 27', indicating North American Datum of 1927."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 7th day of May, 1987.

H.B. 441

CHAPTER 149

AN ACT TO ALLOW CERTAIN NAMED MUNICIPALITIES TO DISPOSE OF AGRICULTURAL COMMODITIES IN ANY MANNER REGARDLESS OF ITS VALUE.

The General Assembly of North Carolina enacts:

Section 1. A city may dispose of agricultural commodities produced by a by-product of wastewater disposal in any manner without regard to the dollar value limitation.

Sec. 2. This act applies only to the Towns of Ahoskie, Aulander, Conway, Jackson, Murfreesboro, Seaboard, Winton, and Woodland.

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 7th day of May, 1987.

H.B. 480

CHAPTER 150

AN ACT TO PROHIBIT THE ERECTION OF OUTDOOR ADVERTISING ON A PORTION OF U.S. HIGHWAY 74 AND U.S. HIGHWAY 76 IN COLUMBUS COUNTY.

The General Assembly of North Carolina enacts:

Section 1. No outdoor advertising, as defined in G.S. 136-128(3), that is visible and intended to be read from the right-of-way of that portion of U.S. Highway 74 and U.S. Highway 76 located in Columbus County, consisting of 17.955 miles and extending from just east of Whiteville at the intersection of 74-76 with NCSR 1700 to the intersection with NCSR 1735 and through Friar Swamp to a point 2.62 miles east of NCSR 1800, shall be erected on or after the effective date of this act.

Sec. 2. Section 1 of this act shall not apply to outdoor advertising described in G.S. 136-129 (1), (2), or (3).

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 7th day of May, 1987.

H.B. 487

CHAPTER 151

AN ACT TO AUTHORIZE THE CITY MANAGER OF CHARLOTTE TO REJECT BIDS WHEN APPROPRIATE WITHOUT ACTION BY THE CHARLOTTE CITY COUNCIL.

The General Assembly of North Carolina enacts:

Section 1. The seventh paragraph of G.S. 143-129 is amended by deleting: "If a contract cannot be let under the above conditions, the board or governing body is authorized to readvertise, as herein provided, after having made such changes in plans and specifications as may be necessary to bring the cost of the project within the funds available therefor. The procedure above specified may be repeated if necessary in order to secure an acceptable contract within the funds available therefor.", and substituting: "If a contract cannot be let under the above conditions, the board or governing body is authorized to readvertise, as herein provided, after having made such changes in plans and specifications as may be necessary to bring the cost of the project within the funds available therefor. When a contract must be rebid, the City Manager may reject all bids based on the original specifications without further action by the City Council. The procedure above specified may be repeated if necessary in order to secure an acceptable contract within the funds available therefor."

Sec. 2. All laws and clauses of laws in conflict with this act are hereby repealed.

Sec. 3. This act applies to the City of Charlotte only.

Sec. 4. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 7th day of May, 1987.

H.B. 523

CHAPTER 152

AN ACT TO PROVIDE STAGGERED TERMS FOR THE BOARD OF COMMISSIONERS OF LINCOLN COUNTY.

The General Assembly of North Carolina enacts:

Section 1. In 1990, five members of the Lincoln County Board of Commissioners shall be elected. The two persons receiving the highest numbers of votes shall be elected for four-year terms, and the three persons receiving the next highest numbers of votes shall be elected for two-year terms. In 1992 and quadrennially thereafter, three persons shall be elected for four-year terms. In 1994 and quadrennially thereafter, two persons shall be elected for four-year

terms.

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 7th day of May, 1987.

H.B. 524

CHAPTER 153

AN ACT TO REPEAL THE HIGH POINT CAREER SERVICE LAW.

The General Assembly of North Carolina enacts:

Section 1. Article V, Sections 5.1, 5.2, 5.3 and 5.4 of the Charter of the City of High Point, being Chapter 501, Session Laws of 1979, as amended by Chapter 180 of the Session Laws of 1983, is repealed.

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 7th day of May, 1987.

S.B. 160

CHAPTER 154

AN ACT TO PERMIT 16 AND 17 YEAR OLDS TO DO LIMITED DRIVING ON THE JOB.

The General Assembly of North Carolina enacts:

Section 1. G.S. 95-25.5 is amended by adding a new subsection to read:

"(1) Notwithstanding any other provision of this section, any youth who holds a North Carolina driver's license valid for the type of driving involved may be assigned as part of his employment to drive an automobile or truck not exceeding 6,000 pounds gross vehicle weight within a 25-mile radius of the principal place of employment, provided that the youth has completed a State-approved driver-education course, and provided that the assignment does not involve the towing of vehicles. 'Gross vehicle weight' includes the truck chassis with lubricants, water and full tank or tanks of fuel, plus the weight of the cab or driver's compartment, body and special chassis and body equipment, and payload."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 8th day of May, 1987.

S.B. 278

CHAPTER 155

AN ACT TO ELIMINATE THE REQUIREMENT THAT THE TOWN OF GRANITE FALLS MAIL ZONING NOTICES.

The General Assembly of North Carolina enacts:

Section 1. Notwithstanding G.S. 160A-384 or any other provision of law, a town or city shall not be required to mail any notice of proposed zoning classification actions to any property owners or other person.

Sec. 2. This act applies only to the Town of Granite Falls.

Sec. 3. This act is effective upon ratification, but expires June 30, 1988.

In the General Assembly read three times and ratified this the 8th day of May, 1987.

S.B. 280

CHAPTER 156

AN ACT TO REVISE THE LICENSE FEES FOR HUNTING, TRAPPING, AND FISHING.

The General Assembly of North Carolina enacts:

Section 1. G.S. 113-270.2(c) reads as rewritten:

"(c) The hunting licenses issued by the Wildlife Resources Commission are as follows:

- (1) Resident sportsman combination license -- ~~\$30.00~~ \$40.00. This license is valid only for use by an individual resident of the State.
- (1a) Lifetime sportsman combination licenses. -- These licenses are valid only for use by individual holders and are of the following types depending on the holders' ages on the dates of issue:
 - a. Type I available only to an individual under one year of age -- ~~\$100.00~~ \$200.00.
 - b. Type Y available only to an individual under 12 years of age -- ~~\$200.00~~ \$350.00.
 - c. Type A available to a resident individual of any age -- ~~\$300.00~~ \$500.00.
 - d. Type N available to a nonresident individual of any age -- ~~\$500.00~~ \$1,000.
- (2) Resident combination hunting-fishing license -- ~~\$15.50~~ \$20.00. This license is valid only for use by an individual resident of the State.

- (3) Resident State hunting license -- ~~\$11.50~~ \$15.00. This license is valid only for use by an individual resident of the State.
- (3a) Lifetime resident ~~State comprehensive~~ hunting license -- ~~\$150.00~~ \$250.00. This license is valid only for use by an individual resident of the State.
- (4) Resident county hunting license -- ~~\$6.00~~ \$10.00. This license is valid for use by an individual resident of the State within the county in which he resides.
- (5) Controlled shooting preserve hunting license -- ~~\$12.50~~ \$15.00. This license is valid only for use by an individual hunting in special controlled shooting preserves licensed in accordance with this subchapter.
- (6) Nonresident sportsman combination license -- ~~\$95.00~~ \$130.00. This license is valid for use by an individual within the State.
- ~~(7) Nonresident State hunting license -- \$41.00. This license is valid for use by an individual within the State.~~
- (8) Nonresident six-day hunting license -- ~~\$25.00~~ \$40.00. This license is valid only for use on six consecutive hunting days by an individual within the State. Consecutive hunting days do not include Sundays except on military reservations where Sunday hunting is permitted.
- (8a) Resident comprehensive hunting license -- \$30.00. This license is valid only for use by an individual resident of the State.
- (8b) Nonresident comprehensive hunting license -- \$80.00. This license is valid for use by an individual within the State.
- (9) Disabled veteran lifetime combination hunting-fishing license -- \$7.50. This license is valid only for use by an individual resident of the State who is a fifty percent (50%) or more disabled war veteran as determined by the Veterans Administration. The license is valid for the life of the individual so long as he remains fifty percent (50%) or more disabled.
- (10) [Reserved.]
- (11) Age 70 lifetime combination hunting-fishing license -- \$10.00. This license is valid only for use by an individual resident of the State who has attained the age of 70 years. The license is valid for the life of the individual.
- (12) Totally disabled resident combination hunting-fishing license -- \$7.50. This license is valid only for use by an individual resident of the State who is totally disabled (physically incapable of being gainfully employed). This

license is valid for the life of the individual so long as he remains totally disabled."

Sec. 2. G.S. 113-270.2(d) reads as rewritten:

"(d) One dollar (\$1.00) of the proceeds received from the sale of each nonresident ~~State hunting license sportsman combination license, each nonresident comprehensive hunting license, and each nonresident six-day hunting license~~ sold must be set aside by the Wildlife Resources Commission and contributed to a proper agency or agencies in the United States for expenditure in Canada for the propagation, management, and control of migratory waterfowl."

Sec. 3. G.S. 113-270.3(b) reads as rewritten:

"(b) The special activity licenses issued by the Wildlife Resources Commission are as follows:

- (1) Resident big game hunting license -- ~~\$8.00~~ \$10.00. This license is valid only for use by an individual resident of the State and must be procured before taking any big game within the State.
- ~~(2) Nonresident big game hunting license -- \$30.00. This license is valid for use by an individual within the State and, unless the resident big game hunting license has been validly procured, must be procured before taking any big game within the State.~~
- (2) Nonresident bear hunting license -- \$250.00. This license is valid for use by an individual within the State and must be procured before taking any bear within the State. Notwithstanding any other provision of law, a nonresident individual may not take any bear within the State without procuring this license.
- (3) Primitive weapons hunting license -- ~~\$8.00~~ \$10.00. This license is valid for use only by an individual ~~within~~ resident of the State and must be procured before taking any wild animals or birds with a primitive weapon during any special season for hunting with primitive weapons established by the Wildlife Resources Commission. During the regular season, a primitive weapon may be used without any special license unless its use is prohibited. For the purposes of this section a 'primitive weapon' includes a bow and arrow, muzzle-loading firearm, and any other primitive weapon specified in the regulations of the Wildlife Resources Commission.
- (4) Game land license -- ~~\$9.00~~ \$15.00. This license is valid for use only by an individual ~~within~~ resident of the State and must be procured before hunting or trapping on game lands or fishing in managed waters on game lands. Managed waters include public mountain trout waters and

other public waters, or private ponds, lying wholly or partly on game lands and designated as managed waters by the Wildlife Resources Commission. Possession of this license does not exempt its holder from payment of any applicable special use fees that may be prescribed by the Wildlife Resources Commission under the authority of G.S. 113-264(a), such as fees for field trials on game lands.

- (5) Falconry license -- \$10.00. This license is valid for use by an individual within the State and must be procured before:
- a. Taking, importing, transporting, or possessing a raptor; or
 - b. Taking wildlife by means of falconry.

The Wildlife Resources Commission may issue classes of falconry licenses necessary to participate in the federal/State permit system, require necessary examinations before issuing licenses or permits to engage in various authorized activities related to possession and maintenance of raptors and the sport of falconry, and regulate licenses as required by governing federal law and regulations. To defray the costs of administering required examinations, the Wildlife Resources Commission may charge reasonable fees upon giving them. To meet minimum federal standards plus other State standards in the interests of conservation of wildlife resources, the Wildlife Resources Commission may impose all necessary controls, including those set out in the sections pertaining to collection licenses and captivity licenses, and may issue permits and require reports, but no collection license or captivity license is needed in addition to the falconry license."

Sec. 4. G.S. 113-270.3(d) reads as rewritten:

"(d) Any individual who possesses a current and valid ~~lifetime or resident or nonresident sportsman combination license or resident or nonresident comprehensive hunting license~~ may at lawful times and places engage in any specially regulated activity without any of the licenses required by subdivisions (1), (3), and ~~through~~ (4) of subsection (b). The Wildlife Resources Commission may administratively provide for the annual issuance of big game tags, or other identification for big game authorized by subsection (c), to holders of lifetime sportsman combination licenses."

Sec. 5. G.S. 113-270.3(e) reads as rewritten:

"(e) Any individual who possesses a current and valid resident or nonresident ~~variable short-term~~ comprehensive fishing license may at lawful times and places fish in managed waters on game lands without the game land license required by subdivision (4) of subsection (b)."

Sec. 6. G.S. 113-270.4 reads as rewritten:

"§ 113-270.4. *Hunting guide license.*--(a) No one may serve for hire as a hunting or fishing guide without having first procured a current and valid hunting and fishing guide license. This license is valid only for use by an individual resident of the State meeting the criteria set by the Wildlife Resources Commission for issuance of the license. Possession of the hunting and fishing guide license does not relieve the guide from meeting other applicable license requirements.

(b) The hunting and fishing guide license is an annual license issued upon payment of ~~six dollars (\$6.00)~~ ten dollars (\$10.00) beginning July 1 of each year running until the following June 30.

(c) The Wildlife Resources Commission may by regulation provide for the qualifications and duties of hunting and fishing guides. In implementing this section, the Wildlife Resources Commission may delegate to the Executive Director and his subordinates administrative responsibilities concerning the selection and supervision of hunting and fishing guides, except that provisions relating to revocation of hunting and fishing guide licenses must be substantially set out in the regulations of the Wildlife Resources Commission."

Sec. 7. G.S. 113-270.5(b) reads as rewritten:

"(b) The trapping licenses issued by the Wildlife Resources Commission are as follows:

- (1) Resident State trapping license -- ~~\$15.00~~ \$25.00. This license is valid only for use by an individual resident of the State.
- (2) Resident county trapping license -- ~~\$8.00~~ \$10.00. This license is valid only for use by an individual resident of the State within the county in which he resides.
- (3) Nonresident State trapping license -- ~~\$60.00~~ \$100.00. This license is valid for use by an individual within the State."

Sec. 8. G.S. 113-271(d) reads as rewritten:

"(d) The hook-and-line fishing licenses issued by the Wildlife Resources Commission are as follows:

- (1a) Resident sportsman combination license -- ~~\$30.00~~ \$40.00. This license is valid only for use by an individual resident of the State.
- (1b) Resident ~~variable short-term~~ comprehensive fishing licenses ~~which are~~ valid only for use by ~~an individual resident~~ residents of the State ~~during the day or consecutive days~~

indicated at the following rates:

- a. One day -- ~~\$6.50~~ \$10.00.
 - b. Three days -- ~~\$9.50~~.
 - c. Six days -- ~~\$12.50~~.
 - d. Annual -- ~~\$25.00~~.
- (1c) Lifetime sportsman combination licenses. -- These licenses are valid only for use by individual holders and are of the following types depending on the holders' ages on the dates of issue.
- a. Type I available only to an individual under one year of age -- ~~\$100.00~~ \$200.00.
 - b. Type Y available only to an individual under 12 years of age -- ~~\$200.00~~ \$350.00.
 - c. Type A available to a resident individual of any age -- ~~\$300.00~~ \$500.00.
 - d. Type N available to a nonresident individual of any age -- ~~\$500.00~~ \$1,000.
- (2) Resident combination hunting-fishing license -- ~~\$15.00~~ \$20.00. This license is valid only for use by an individual resident of the State.
- (2a) Resident state fishing license -- ~~\$11.50~~ \$15.00. This license is valid only for use by an individual resident of the State.
- (2b) Lifetime resident ~~State comprehensive~~ fishing license -- ~~\$150.00~~ \$250.00. This license is valid only for use by an individual resident of the State.
- (3) Resident county fishing license -- ~~\$6.00~~ \$10.00. This license is valid only for use by an individual resident of the State within the county in which he resides.
- (4) Resident ~~variable short-term one-day~~ State fishing licenses which are license valid only for use by an individual resident of the State during the day ~~or consecutive days~~ indicated: -- ~~\$5.00~~, ~~at the following rates:~~
- a. One day -- ~~\$3.25~~.
 - b. Three days -- ~~\$5.50~~.
 - c. Six days -- ~~\$7.50~~.
- (4a) Nonresident sportsman combination license -- ~~\$95.00~~ \$130.00. This license is valid for use by an individual within the State.
- (4b) Nonresident ~~variable short-term~~ comprehensive fishing licenses which are valid only for use by an individual within the State only during the day ~~or~~, consecutive days, or year indicated ~~at the following rates:~~

- a. One day -- ~~\$8.50~~ \$15.00.
 - b. Three days -- ~~\$12.50~~ \$25.00.
 - c. ~~Six days -- \$15.50.~~
 - d. Annual -- \$50.00.
- (5) Nonresident State fishing license -- ~~\$20.50~~ \$30.00. This license is valid for use by an individual within the State.
 - (6) Nonresident variable short-term State fishing licenses which are valid only for use by an individual within the State during the day or consecutive days indicated at the following rates:
 - a. One day -- ~~\$5.50~~ \$10.00.
 - b. Three days -- ~~\$8.50~~ \$15.00.
 - c. ~~Six days -- \$10.50.~~
 - (7) Lifetime fishing license for the legally blind -- No charge. This license is valid only for use by an individual resident of the State who has been certified by the Department of Human Resources as a person whose vision with glasses is insufficient for use in ordinary occupations for which sight is essential. This license is valid for the life of the individual so long as he remains legally blind.
 - (8) Disabled veteran lifetime combination hunting-fishing license -- \$7.50. This license is valid only for use by an individual resident of the State who is a fifty percent (50%) or more disabled war veteran as determined by the Veterans Administration. The license is valid for the life of the individual so long as he remains fifty percent (50%) or more disabled.
 - (9) [Reserved.]
 - (10) Age 70 lifetime combination hunting-fishing license -- \$10.00. This license is valid only for use by an individual resident of the State who has attained the age of 70 years. The license is valid for the life of the individual.
 - (11) Totally disabled resident combination hunting-fishing license -- \$7.50. This license is valid only for use of an individual resident of the State who is totally disabled (physically incapable of being gainfully employed). This license is valid for the life of the individual so long as he remains totally disabled."

Sec. 9. G.S. 113-271(e) reads as rewritten:

"(e) A special guest fishing license, to be sold for an annual fee of ~~twenty-five dollars (\$25.00)~~ fifty dollars (\$50.00) upon application to the Wildlife Resources Commission in the form which they may require, may be purchased by the owner or lessee of private property

bordering inland or joint fishing waters entitling persons to fish from such waterfront property and any pier or dock originating on such property without any additional inland fishing license. This license is applicable only to private property and private docks and piers and is not valid for any property, pier, or dock operated for any commercial purpose whatsoever. The guest fishing license shall not be in force unless displayed on the premises of the property and only entitles fishing without additional license to persons fishing from the licensed property and then only within the private property lines of the site of posting. The guest fishing license is not transferable as to person or location. These provisions shall not apply to residents of the Cherokee Indian Reservation."

Sec. 10. G.S. 113-272(d) reads as rewritten:

"(d) The special trout licenses issued by the Wildlife Resources Commission are as follows:

- (1a) Resident sportsman combination license -- ~~\$30.00~~ \$40.00. This license is valid in public mountain trout waters for use only by an individual resident of the State.

- (1a1) Resident ~~variable short-term~~ comprehensive fishing licenses ~~which are~~ valid for use in public mountain trout waters only by an individual resident of the State ~~during the day or consecutive days indicated at the following rates:~~

- a. One day -- ~~\$6.50~~ \$10.00.

- b. Three days -- ~~\$9.50~~.

- c. Six days -- ~~\$12.50~~.

- d. Annual -- \$25.00.

- (1a2) Lifetime sportsman combination licenses. -- These licenses are valid only for use by individual holders and are of the following types depending on the holders' ages on the dates of issue:

- a. Types I available only to an individual under one year of age -- ~~\$100.00~~ \$200.00.

- b. Types Y available only to an individual under 12 years of age -- ~~\$200.00~~ \$350.00.

- c. Type A available to a resident individual of any age -- ~~\$300.00~~ \$500.00.

- d. Type N available to a nonresident individual of any age -- ~~\$500.00~~ \$1,000.

- (1b) Resident special trout license -- ~~\$7.00~~ \$10.00. This license is valid only for use by an individual resident of the State in public mountain trout waters.

- (1b1) Lifetime resident comprehensive fishing license -- \$250.00.
- (1c) Nonresident sportsman combination license -- \$95.00 \$130.00. This is valid for use by an individual within the State in public mountain trout waters.
- (1d) Nonresident ~~variable short-term~~ comprehensive fishing licenses which are valid for use in public mountain trout waters only by an individual within the State during the day ~~or~~, consecutive days, or year indicated at the following rates:
- a. One day -- \$8.50 \$15.00.
- b. Three days -- \$12.50 \$25.00.
- c. Six days -- \$15.50.
- d. Annual -- \$50.00.
- ~~(2) Nonresident special trout license -- \$15.00. This license is valid for use by an individual within the State in public mountain trout waters.~~
- (3) Lifetime fishing license for the legally blind -- No charge. This is valid in public mountain trout waters for use only by an individual resident of the State. It is issued upon the terms set out in G.S. 113-271(d)(8)."

Sec. 11. G.S. 113-272.2(c) reads as rewritten:

"(c) The special device licenses issued by the Wildlife Resources Commission are as follows:

- (1) Resident special device license -- ~~\$13.00~~ \$10.00. Except as regulations of the Wildlife Resources Commission provide for use of equipment by more than one person, this license is valid only for use by an individual resident of the State. It authorizes the taking of nongame fish from inland fishing waters with special devices authorized by the regulations of the Wildlife Resources Commission for use in specified waters. The Wildlife Resources Commission may restrict the user of the license to specified registered equipment, require tagging of items of equipment, charge up to one dollar (\$1.00) per tag issued, and require periodic catch data reports. Unless specifically prohibited, nongame fish lawfully taken under this license may be sold.
- (2) Nonresident special device license -- ~~\$30.00~~ \$50.00. Except as regulations of the Wildlife Resources Commission provide for use of equipment by more than one person, this license is valid for use by an individual within the State. It is otherwise subject to the terms and conditions set out in subdivision (1) above.

- ~~(3) Resident personal use special device license -- \$5.25. This license is valid only for use by an individual resident of the State. It authorizes the taking of nongame fish from inland fishing waters with special devices authorized by the regulations of the Wildlife Resources Commission for use in specified waters. The Wildlife Resources Commission may restrict the total amount of equipment used, and may require tagging of unattended equipment. Fish taken under this license may not be sold.~~
- ~~(4) Nonresident personal use special device license -- \$13.00. This license is valid for use by an individual within the State. It is otherwise subject to the terms and conditions set out in subdivision (3) above."~~

Sec. 12. G.S. 113-272.2(d) reads as rewritten:

"(d) Any individual who holds a current and valid primitive weapons hunting license, comprehensive hunting license, or sportsman combination license may take nongame fish from inland fishing waters ~~for personal use~~ with a bow and arrow in accordance with the regulations of the Wildlife Resources Commission without being required to obtain a special device license."

Sec. 13. All persons holding a lifetime resident State hunting license or a lifetime resident State fishing license on July 1, 1987 may exchange that license for the corresponding lifetime comprehensive hunting license or comprehensive fishing license by paying an additional fee of one hundred dollars (\$100.00) to the Wildlife Endowment Fund before July 1, 1988. The Wildlife Resources Commission shall mail a written notice of this option and the method in which it may be exercised to each eligible person at the person's address as indicated in the Commission's records. The Commission may also provide additional publicity of the option by other means.

Sec. 14. This act shall become effective July 1, 1987.

In the General Assembly read three times and ratified this the 8th day of May, 1987.

S.B. 313

CHAPTER 157

AN ACT TO ALLOW THE COUNTY OF ROWAN TO CONVEY ITS INTEREST IN THE OLD POST OFFICE PROPERTY IN SALISBURY AT PRIVATE SALE.

The General Assembly of North Carolina enacts:

Section 1. Notwithstanding G.S. 153A-176 or Article 12 of Chapter 160A of the General Statutes, the County of Rowan may convey at private sale or lease by private lease, with or without

Old Post Office property in Salisbury.

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 8th day of May, 1987.

S.B. 332

CHAPTER 158

AN ACT TO MODIFY THE RULES FOR DISPOSITION OF
UNCLAIMED CLOTHING BY LAUNDRIES AND DRY
CLEANING ESTABLISHMENTS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 66-67 is amended as follows:

(1) by deleting the phrase "one hundred and fifty dollars (\$150.00)" and substituting the phrase "five hundred dollars (\$500.00)";

(2) by deleting the phrase "two years" and substituting the phrase "one year"; and

(3) by deleting the phrase "registered or".

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 8th day of May, 1987.

S.B. 374

CHAPTER 159

AN ACT TO AUTHORIZE THE COUNCIL OF THE CITY OF
ALBEMARLE TO SELL AND CONVEY TO CHALLENGER
ELECTRICAL EQUIPMENT CORPORATION THE INTEREST
OF THE CITY OF ALBEMARLE IN A 12.69 ACRE PARCEL OF
LAND, WITH IMPROVEMENTS THEREON, LOCATED IN
HARRIS TOWNSHIP, STANLY COUNTY, NORTH CAROLINA.

Whereas, Harris Township Industrial Development Corporation, a nonprofit corporation, owns a parcel of land containing approximately 12.69 acres more particularly described as Parcel A (containing 10.25 acres) and Parcel B (containing 2.44 acres) in Deed Book 224, page 411, Stanly County Registry, and improvements thereon, together with an easement of ingress and egress to the property, the deed for which is recorded in Deed Book 215, page 688, Stanly County Registry; and

Whereas, the charter of Harris Township Industrial Development Corporation provides that upon dissolution of the corporation title to its property shall vest in the City of Albemarle, a municipal corporation; and

Whereas, Challenger Electrical Equipment Corporation desires to acquire the aforesaid 12.69 acre parcel, and improvements thereon, and the easement of ingress and egress to the parcel, and has offered to pay the City of Albemarle the sum of six hundred thousand dollars (\$600,000) for its interest in said parcel and easement; Now, therefore,

The General Assembly of North Carolina enacts:

Section 1. The Council of the City of Albemarle may sell to Challenger Electrical Equipment Corporation, or its designee, at private sale for the sum of six hundred thousand dollars (\$600,000) the interest of the City of Albemarle in and to the parcel of land containing approximately 12.69 acres, and improvements thereon, located in Harris Township, Stanly County, North Carolina and more particularly described as Parcel A (containing 10.25 acres) and Parcel B (containing 2.44 acres) in Deed Book 224, page 411, Stanly County Registry, and the easement of ingress and egress to the property recorded in Deed Book 215, page 688, Stanly County Registry.

Sec. 2. All laws and clauses of law in conflict herewith are hereby repealed.

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 8th day of May, 1987.

S.B. 390

CHAPTER 160

AN ACT AUTHORIZING THE WAKE FOREST BOARD OF COMMISSIONERS TO SELL PROPERTY AT PRIVATE SALE.

The General Assembly of North Carolina enacts:

Section 1. The Board of Commissioners of the Town of Wake Forest may sell to the Wake Forest Area Chamber of Commerce at private sale, for fair market value or less, the surplus fire station and appurtenant real property located at 350 South White Street. The Board is not required to follow the procedural requirements of G.S. 160A-267.

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 8th day of May, 1987.

AN ACT AUTHORIZING THE APPOINTMENT OF A SPECIAL BOARD OF EQUALIZATION AND REVIEW FOR CUMBERLAND COUNTY.

The General Assembly of North Carolina enacts:

Section 1. The Board of County Commissioners of Cumberland County may appoint a Special Board of Equalization and Review for Cumberland County, and the Chairman thereof, in the manner provided in G.S. 105-322(a), provided that the Board shall consist of not less than five nor more than nine members. Should the Board of County Commissioners not appoint a Special Board of Equalization and Review hereunder, then the Board of County Commissioners shall comprise the Board of Equalization and Review and shall have the powers and duties provided in G.S. 105-322.

Sec. 2. The Board of Equalization and Review of Cumberland County shall receive compensation, take such oath, hold meetings, take minutes of meetings, and provide notice of meetings and adjournments as provided in G.S. 105-322(b), (c), (d), (e) and (f).

Sec. 3. The Board of Equalization and Review of Cumberland County shall possess the powers and duties enumerated in G.S. 105-322, as amended from time to time, and as may appear elsewhere in the General Statutes of North Carolina.

Sec. 4. In addition to the powers and duties set forth in Section 3 above, the Board of Equalization and Review of Cumberland shall have the following additional powers and authority:

(1) **Revaluation Years-Panels.** In any revaluation year, the Chairman of the Board of Equalization and Review shall have the authority to divide the Board into a maximum of three separate panels with a minimum of three Board members for each panel. The Board members for the panels may be interchanged during the year.

(2) **Minutes of Panel Meetings.** In the event the chairman exercises the right to divide the Board into panels, the tax supervisor of Cumberland County shall designate a deputy or deputies to be present at panel meetings at which he cannot be present and maintain accurate minutes as set forth in G.S. 105-322(d).

(3) **Panel Quorum, Decisions and Appeals.** At meetings of separate panels, a majority of the members of a particular panel shall constitute a quorum and a decision by the panel will constitute a decision of the Board. Appeals from decisions of a panel shall be made, as an appeal from the Board, directly to the appellate body as provided in G.S. 105-324.

Sec. 5. The provisions of this act shall apply only to Cumberland County and it is the intent to amend G. S. 105-322 only with respect to Cumberland County.

Sec. 6. All laws and clauses of laws in conflict with this act are hereby repealed.

Sec. 7. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 8th day of May, 1987.

H.B. 175

CHAPTER 162

AN ACT TO AMEND THE DEFINITION OF CARETAKER IN THE JUVENILE CODE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 7A-517(5) reads as rewritten:

"(5) Caretaker. Any person other than a parent who ~~is in care of a juvenile, including any blood relative, stepparent, foster parent, or house parent, cottage parent or other person supervising a juvenile in a child care facility.~~ 'Caretaker' also means any adult person with the approval of the care provider in a day care plan or facility as defined in G.S. 110-86, has the care of a juvenile. Caretaker includes any blood relative, stepparent, foster parent, house parent, cottage parent, or other person supervising a juvenile in a child-care facility. 'Caretaker' also means any person who has the responsibility for the care of a juvenile in a day-care plan or facility as defined in G.S. 110-86 and includes any person who has the approval of the care provider to assume responsibility for the juveniles under the care of the care provider."

Sec. 2. This act shall become effective October 1, 1987.

In the General Assembly read three times and ratified this the 8th day of May, 1987.

H.B. 356

CHAPTER 163

AN ACT TO AMEND THE ESCHEAT AND ABANDONED PROPERTY LAWS OF NORTH CAROLINA, TO EASE COMPLIANCE WITH ITS PROVISIONS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 116B-29(a) reads as rewritten:

"§ 116B-29. Report of abandoned property by holder to ~~Commissioner of Insurance or Treasurer.~~-(a) Reports to ~~Commissioner of Insurance and Treasurer.~~ Every insurer holding property presumed abandoned under the provisions of one or more of the following sections, G.S.

116B-13, 116B-14, 116B-16, 116B-17, 116B-20, or 116B-21, shall report ~~to the Commissioner of Insurance, with respect to that property; however, payment of such property shall be and make payment~~ to the Treasurer in accordance with G.S. 116B-31. Every other person holding funds or other property, tangible or intangible, presumed abandoned under this Chapter shall report to the State Treasurer with respect to that property."

Sec. 2. G.S. 116B-29(b)(1) reads as rewritten:

"(b) Contents. The report shall be verified and shall include:

- (1) The name, if known, and last known address, if any, of each person appearing from the records of the holder to be the owner of any property of the value of ~~twenty-five dollars (\$25.00)~~ fifty dollars (\$50.00) or more;"

Sec. 3. G.S. 116B-29(b)(3) reads as rewritten:

- "(3) The nature and identifying number, if any, or description of the property and the amount appearing from the records to be due, except that items of value under ~~twenty-five dollars (\$25.00)~~ fifty dollars (\$50.00) each may be reported in the aggregate;"

Sec. 4. The catchline of G.S. 116B-30 and G.S. 116B-30(a) reads as rewritten:

"§ 116B-30. *Preparation of list of owners by State Treasurer and Commissioner of Insurance.*--(a) Listing of Names. There shall be delivered to each clerk of superior court prior to November 1 a list prepared by the State Treasurer of escheated and abandoned property reported to him ~~and the Commissioner of Insurance~~ which lists shall contain:

- (1) The names, if known, in alphabetical order of surname, and last known addresses, if any, of owners of escheated and abandoned property;
- (2) The names and addresses of the holders of the abandoned property; and
- (3) A statement that claim and proof of legal entitlement to escheated or abandoned property shall be presented by the owner to the Treasurer, and setting forth where further information may be obtained."

Sec. 5. G.S. 116B-30(c) reads as rewritten:

"(c) Property Not Required to Be Listed. The Treasurer is not required to include in any such list any item of a value, as determined by the Treasurer, in his discretion, of less than ~~twenty-five dollars (\$25.00)~~ fifty dollars (\$50.00), unless he deems inclusion of items of lesser amounts to be in the public interest."

Sec. 6. G.S. 116B-31(a) reads as rewritten:

"§116B-31. Payment or delivery of abandoned property.--(a) Insurers. Every insurer shall remit or deliver to the ~~Commissioner of Insurance~~ Treasurer on or before December 1, any property deemed abandoned under the provisions of this Chapter and reported as required by G.S. 116B-29. These remittances shall be made payable to the State Treasurer. ~~On or before December 10, the Commissioner of Insurance shall forward the remittances to the State Treasurer along with a copy of the reports required by G.S. 116B-29."~~

Sec. 7. Chapter 116B is amended by adding a new section to read:

"§116B-31.5. Voluntary early delivery.--(a) If the identity of an owner is unknown the holder may voluntarily remit or deliver property subject to this Chapter to the Treasurer prior to the date required by G.S. 116B-31.

(b) If an owner is known but the holder does not possess an address for the owner and the holder has exhausted all methods of contacting the owner that are reasonable under the circumstances, the holder may voluntarily remit or deliver the property to the Treasurer prior to the date required by G.S. 116B-31.

(c) Nothing in this section shall impair the right of the Treasurer to refuse property under the provisions of G.S. 116B-31(c)."

Sec. 8. G.S. 116B-38(a) reads as rewritten:

"§116B-38. Claim for abandoned property paid or delivered.--(a) Filing. Any person claiming an interest in any property delivered to the Treasurer under this Chapter may file a claim to the property or to the proceeds from its sale. The claim shall be on a form prescribed by the Treasurer and shall have affixed thereto any documentary proof of entitlement as may be required by the Treasurer. At the discretion of the Treasurer, the claim shall be made to the person originally holding the property, or to his successor or successors. If such person is satisfied that the claim is valid and that the claimant is the actual and true owner of the property, he shall so certify to the Treasurer by written statement attested by him under oath, or in case of a corporation, by two principal officers, or one principal officer and an authorized employee thereof. The determination of the holder that the claimant is the actual and true owner shall, in the absence of fraud, be binding upon the Treasurer and upon receipt of the certificate of the holder to this effect, the Treasurer shall forthwith authorize and make payment of the claim or return of the property, or if the property has been sold, the amount received from such sale to the owner, or to the holder in the event the owner has assigned the claim to the holder and the certificate of the holder is accompanied by such assignment. In the event the person originally holding the property rejects the claim made against him, the claimant may appeal to the

Treasurer.

If the person originally holding the property, or his successor, is not available, the owner may file a claim with the Treasurer on a form prescribed by the Treasurer. In addition to any other information, the claim shall state the facts surrounding the unavailability of the person originally holding the property and the lack of a successor."

Sec. 9. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 8th day of May, 1987.

H.B. 431

CHAPTER 164

AN ACT TO PERMIT THE DEPARTMENT OF TRANSPORTATION TO SET THE SPEED LIMIT ON INTERSTATE HIGHWAYS AT A MAXIMUM OF SIXTY-FIVE MILES PER HOUR.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-141(b) reads as rewritten:

"(b) Except as otherwise provided in this Chapter, it shall be unlawful to operate a vehicle in excess of the following speeds:

- (1) Thirty-five miles per hour inside municipal corporate limits for all vehicles.
- (2) Fifty-five miles per hour outside municipal corporate limits for all vehicles, except on rural Interstate Highways where the speed limit has been raised pursuant to G.S. 20-141(d)(2), and except for school buses and school activity buses."

Sec. 2. G.S. 20-141(d)(2) reads as rewritten:

"(2) Whenever the Department of Transportation determines on the basis of an engineering and traffic investigation that a higher maximum speed than those set forth in subsection (b) is reasonable and safe under the conditions found to exist upon any part of a highway designated as part of the Interstate Highway System or other controlled-access highway (either inside or outside the corporate limits of a municipality) the Department of Transportation shall determine and declare a reasonable and safe speed limit. A speed limit set pursuant to this subsection may not exceed 70 miles per hour. The Department of Transportation shall set the speed limit not to exceed that allowed by applicable Federal law on any part of the Interstate Highway System that they deem to be safe.

Speed limits set pursuant to this subsection are not effective until appropriate signs giving notice thereof are erected upon the parts of the highway affected."

Sec. 3. G.S. 20-141(k) reads as rewritten:

~~"(k) Notwithstanding any other provision contained in G.S. 20-141 or any other statute or law of this State, the~~ The maximum speed limit on any public highway within the State of North Carolina shall not exceed 55 miles per hour except for those portions of the Interstate Highway System where the Department of Transportation sets a higher speed limit pursuant to subdivision (d)(2) of this section.

Sec. 4. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 8th day of May, 1987.

H.B. 505

CHAPTER 165

AN ACT TO EXEMPT THE COUNTY OF STOKES FROM CERTAIN ZONING NOTICE REQUIREMENTS.

The General Assembly of North Carolina enacts:

Section 1. Notwithstanding G.S. 153A-343 or any other provision of law, a county shall not be required to mail any notice of proposed zoning classification actions to any property owner or other person.

Sec. 2. This act applies only to the County of Stokes.

Sec. 3. This act is effective upon ratification, but expires June 30, 1988.

In the General Assembly read three times and ratified this the 8th day of May, 1987.

H.B. 533

CHAPTER 166

AN ACT TO AMEND THE ERWIN TOWN CHARTER TO PERMIT ANNEXATION OF AREAS LYING WITHIN THE CORPORATE BOUNDARIES.

The General Assembly of North Carolina enacts:

Section 1. The Charter of the Town of Erwin, contained in Section 5 of Chapter 12, Session Laws of 1967, is amended by adding a new Section 2.2 to read:

"Section 2.2. Annexation of Areas Within the Corporate Boundaries. In addition to the authority granted by G.S. 160A-36 (or by G.S. 160A-48 when the population reaches 5,000 or more), the Board may annex any area, or part thereof, which is surrounded by the corporate boundaries of the Town. The procedural requirements

of G.S. Chapter 160A, Article 4A, Part 2 (or Part 3 when the population reaches 5,000 or more) shall be applicable to any such annexation. The property tax liability of any such annexed area shall be determined as provided in G.S. 160A-58.10."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 8th day of May, 1987.

H.B. 534

CHAPTER 167

AN ACT TO INCREASE THE MEMBERSHIP OF THE
EDGECOMBE COUNTY ABC BOARD AND TO PROVIDE FOR
THE APPOINTMENT OF THE CHAIRMAN.

The General Assembly of North Carolina enacts:

Section 1. Chapter 1155 of the 1977 Session Laws is repealed.

Sec. 2. G.S. 18B-700(a) reads as rewritten:

"(a) Membership. A local ABC board shall consist of three five members appointed for three-year terms, ~~unless a different membership or term is provided by a local act enacted before the effective date of this Chapter, or unless the board is a board for a merged ABC system under G.S. 18B-703 and a different size membership has been provided for as part of the negotiated merger.~~ One Two members of the initial enlarged board of a the newly created ABC system shall be appointed for a three-year terms, ~~one two~~ members for ~~a two-year terms~~, and one member for a one-year term. As the terms of initial board members expire, their successors shall each be appointed for three-year terms. The appointing authority members of the ABC board shall designate elect from among its membership one member of the local board as chairman."

Sec. 3. This act shall apply to Edgecombe County only.

Sec. 4. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 8th day of May, 1987.

H.B. 552

CHAPTER 168

AN ACT TO EXTEND THE CORPORATE LIMITS OF THE
TOWN OF RUTHERFORDTON.

The General Assembly of North Carolina enacts:

Section 1. The corporate limits of the Town of Rutherfordton are extended to include the following described areas:

Lying and being in Rutherfordton Township, Rutherford County, North Carolina, and being described as follows:

TRACT ONE:

BEGINNING on an iron pin Hill's now K.E. Simpson an Columbus Jeffries' corner, said iron pin being also the Southeast corner of a 24.80 acre tract conveyed by Willie B. Hill and wife, to K.E. Simpson by deed dated November 25, 1950 and recorded in the office of the Register of Deeds for Rutherford County, N.C. in Deed Book 210 at Page 548 and runs thence from said beginning point North 34-1/2 East 1341 feet to an iron stake and stone heap in the South edge of the right of way of the Duke Power Company's power line; thence with the South edge of said power line North 85-1/2 West 616 feet to a point in the center of the Rutherfordton Road, with iron pin offset on the East side of said road; thence with the center of said road as it meanders, South 38 West 149 feet; South 24-1/2 West 275 feet; North 83-1/2 West 50 feet; North 66-1/2 West 145 feet; South 84 West 152 feet to an iron stake; thence leaving said road and running South 61 West 490 feet to an iron pin a new corner in line of Gibbs land; thence with line of Gibbs land South 26 East 1187 feet to an iron stake Old Jeffries corner, also Southwest corner of above mentioned Willie B. Hill tract; thence North 35 East 577-1/2 feet to the beginning, containing 25.5 acres, more or less, according to a survey made by F.A. Wilkie, Surveyor, May 28, 1951.

And being those properties conveyed to the Town of Rutherfordton by K.E. Simpson and wife, Estelle W. Simpson, by deed dated July 3, 1951, of record in Deed Book 214, Page 157, Rutherford County Registry.

TRACT TWO:

Situate on both sides of Cleghorn Creek and on the waters of Stonecutter Creek, and locally known as the J. H. (Bud) Gibbs farm and being located a short distance south of the corporate limits of the Town of Rutherfordton and including about 55 acres, being all of the lands conveyed by J. F. Flack, administrator of B.C. Lauter, to J. H. Gibbs, by deed dated August 13, 1931, and recorded in deed book 150 at page 144, and including the eastern part of that tract of land conveyed by M. Georgion and wife to J. H. Gibbs by deed dated August 14, 1941, and recorded in Deed Book 178 at page 17, of Rutherford County Registry, which last mentioned tract as described hereinafter also includes within its boundary about 2 acres heretofore conveyed by J. H. Gibbs to the Town of Rutherfordton, the outside boundary lines of said lands hereby conveyed being more particularly described as follows:

BEGINNING on an iron stake, which is the southeastern corner of a 20 acre tract conveyed by Mitchell Roberts, executor of J. H. Gibbs to Ralph Russell and wife by deed recorded in book 183 at page 522, said iron stake being also the northeastern corner of a 15 acre tract formerly conveyed by B.C. Lauter to R. L. Ruff as described in deed

book 133 at page 393. Rutherford County Registry and running thence with the eastern line of said 15 acre tract S. 1-1/2 W. 28 poles to a stone, old corner; thence with the old line of said tract N. 89 W. 30 poles to a stone in the old line; thence running with the old line of the original 70 acre tract S. 16 E. 29-4/5 poles to a stake; thence E. 45-1/5 poles to a stone in Cleghorn Creek; thence down the creek and with Ed Geer's line S. 7-1/2 E. 32 poles; S. 19 W. 8-4/5 poles; S. 54-1/2 W. 34 poles; S. 69 W. 8 poles; and S. 76 W. 30 poles to a point in the center of said creek and in the center of Stonecutter Creek entering from the east; thence up the center of Stonecutter Creek S. 84 E. 63-4/5 poles to a stake at the edge of the water; thence N. 52 E. 41 poles to a point in the creek; thence N. 61-1/2 E. 47 poles to a stone in the creek Mauney's old corner; thence leaving the creek and running with the old line N. 30 W. (V.2-3/4) 100 poles to a stake and pointers on the west side of a hill, old corner, being also the southeast corner of the 34 acre tract conveyed by M. Georgion and wife to J. H. Gibbs; thence with the eastern line of the said 34 acre tract N. 33 W. 46 poles to a stake and pointers in the old Wright Logan line (corner of lot No. 4) said stake being now located in Mrs. Effie Patton's line in or near the Duke Power Company transmission line, thence with Mrs. Patton's line N. 85 W. 97 poles, more or less, to a point in the center of Cleghorn Creek, corner of Ralph Russell's 20 acre tract; thence down and along the center of Cleghorn Creek, and with Ralph Russell's line and with the southern or outside line of the 2 acre tract conveyed by J.H. Gibbs to the Town of Rutherfordton to a point in the center of said Cleghorn Creek, which point is the northeastern corner of the said Ralph Russell 20 acre tract; thence with line of same S. 3-3/4 E. 23 poles to the Beginning, containing a total of 70 acres, more or less.

And being those properties conveyed to the Town of Rutherfordton by Mitchell Roberts and wife, Mamie Gibbs Roberts, by deed dated November 20, 1957, of record in Deed Book 238, Page 490, Rutherford County Registry.

TRACT THREE:

All of that tract or parcel of land situate upon Cleghorn Creek, and Stonecutter Creek, and adjoining the lands of the Town of Rutherfordton, and the remaining lands of E.S. Geer and being the southeastern part of that tract of land heretofore conveyed to E.S. Geer by C.W. Keeter and others by deed dated December 17, 1926, and which is recorded in Rutherford County Registry in deed book 133 at page 464, that part of said tract hereby conveyed being described herein according to a partial survey by W.O. Justice, surveyor, in March, 1961, as follows:

BEGINNING on a pine which is located approximately in the middle of the third call in the aforesaid deed from C.W. Keeter and in the old line and in the line of the property of the Town of Rutherfordton, as purchased from Mitchell Roberts and wife, said pine being 372 feet east of the old stone corner, which marks the end of the second call in the Keeter deed and running thence with the old line and line of the Town of Rutherfordton (and following a wire fence) E. 373 feet to the center of Cleghorn Creek; thence with the creek and with several lines of the Town of Rutherfordton as follows: (1) S. 7-1/2 E. 478-1/2 feet; (2) S. 19 W. 178 feet; (3) S. 54-1/2 W. 551 feet (4) S. 69 W. 132 feet; (5) S. 76 W. 528 feet to a point in the creek at the intersection of Stonecutter Creek, corner of purchase from Mitchell Roberts and wife, thence continuing down the creek and with the old Geer line N. 81 W. 148-1/2 feet to a stone; thence W. 231 feet to a point in the center of the creek as formerly located, old corner, which old corner is located N. 43 E. 10 poles from the old Creek ford; thence a new line N. 20 W. and passing two sycamores at 100 feet 231 feet to an iron pin, a new corner; thence three new lines as follows: (1) N. 77 E. 900 feet to an iron stake; (2) N. 47 E. 400 feet to an iron stake and (3) N. 2 W. 400 feet to the Beginning, containing 18-1/2 acres more or less.

And being those properties conveyed to the Town of Rutherfordton by E.S. Geer, widower, by deed dated March 13, 1961, of record in Deed Book 256, Page 205, Rutherford County Registry.

TRACT FOUR:

All of that certain tract or parcel of land situate on the southeast side of Stonecutter Creek and on both sides of the Poors Ford Road, and being the eastern part of tract of land conveyed by F.A. Sims and wife to R.E.L. Freeman and H.R. Freeman by deed dated December 2, 1918, and recorded in Rutherford County Registry in Deed Book 109 at page 74, and the same land conveyed in a division from H.R. Freeman and wife to R.E.L. Freeman dated March 21, 1921, and recorded in Rutherford County Registry in Deed Book 115 at Page 379 and willed by R.E.L. Freeman to his wife Margaret A. Freeman, and subject to such life estate to James W.L. Freeman (who is the same person as James William Freeman) said will being recorded in Will Book "I" at page 336, and the life estate of the said Margaret A. Freeman, subsequent to her marriage to Ison Parris, having been conveyed to James William Freeman by deed dated February 29, 1952, and recorded in said Registry in Deed Book 215 at page 355, and being more particularly described as follows:

BEGINNING at an iron stake at the old pine corner, formerly corner of the lands of W.A. and J.J. Harrill, now corner of lands of Francis Roberts, and running thence with old line and crossing the branch S.

60 W. 89-3/4 poles to an iron stake, old division corner; thence with three lines of the division deeds between H.R. Freeman and R.E.L. Freeman (1) N. 14-1/2 E. 53 poles to a pine; (2) N. 19-1/2 E. 18-1/2 poles to a poplar and (3) N. 23-3/4 E. 46-5/8 poles to a point in the center of Poors Ford Road; thence N. 66-1/4 E. 8 poles to the middle of the old ford of Bigham's branch; thence down the branch general course N. 44 W. 23 poles to center of Stonecutter Creek at the mouth of Bigham's branch, and in line of tract of land purchased by Town of Rutherfordton from Mitchell Roberts and wife; thence with line of same and with Stonecutter Creek S. 84 E. 5 poles to a corner of said Roberts tract in a sharp bend of the creek; thence with the creek and line of the Town of Rutherfordton N. 52 E. 41 poles to a point in the creek, corner of the Town's purchase from Mitchell Roberts formerly referred to as being at the north edge of the bridge (old bridge now gone) thence continuing with the creek and line of the Town of Rutherfordton N. 61-1/2 E. 47 poles to a stone in the old Mooney line which marks the southeast corner of the Mitchell Roberts tract; thence with the old Mooney line S. 30 E. (V. 1-1/4) 24-1/2 poles to a stone at the old B.O., formerly Mooney and Harrill's corner; thence with the old Harrill line S. 28-1/2 W. crossing Bigham's branch 124 poles to the Beginning, containing 58 acres, more or less.

And being those properties conveyed to the Town of Rutherfordton by James William Freeman and wife, Carrie B. Freeman, by deed dated June 23, 1962, of record in Deed Book 265, Page 53, Rutherford County Registry.

Tracts One, Two, and Three are identified on the maps of the Tax Supervisor of Rutherford County as Parcel Number 98-1-9. Tract Four is identified on the maps of the Tax Supervisor of Rutherford County as Parcel Number 103-2-38.

Sec. 2. This act shall become effective June 30, 1987.

In the General Assembly read three times and ratified this the 8th day of May, 1987.

H.B. 554

CHAPTER 169

AN ACT TO REVISE AND CONSOLIDATE THE CHARTER OF THE CITY OF KINSTON.

The General Assembly of North Carolina enacts:

Section 1. The Charter of the City of Kinston is hereby revised and consolidated to read as follows:

"THE CHARTER OF THE CITY OF KINSTON**"ARTICLE I. INCORPORATION, CORPORATE POWERS AND BOUNDARIES**

"Section 1.1. Incorporation. The City of Kinston, North Carolina, in Lenoir County, and the inhabitants thereof, shall continue to be a municipal body politic and corporate, under the name of the 'City of Kinston,' hereinafter at times referred to as the 'City'.

"Section 1.2. Powers. The City shall have and may exercise all of the powers, duties, rights, privileges and immunities conferred upon the City of Kinston specifically by this Charter or upon municipal corporations by general law. The term 'general law' is employed herein as defined in G.S. 160A-1.

"Section 1.3. Corporate Limits. The corporate limits shall be those existing at the time of ratification of this Charter, as set forth in the official description of the City's boundaries and on the official map of the City, and as they may be altered from time to time in accordance with law. An official map of the city, showing the current boundaries, shall be maintained permanently in the office of the City Clerk and shall be available for public inspection. Immediately upon alteration of the corporate limits made pursuant to law, the appropriate changes to the official map shall be made, and copies shall be filed in the offices of the Secretary of State, the Lenoir County Register of Deeds and the appropriate board of elections.

"ARTICLE II. GOVERNING BODY

Section 2.1. Mayor and Council. The Mayor and Council shall be the governing body of the City.

"Section 2.2 Council; Composition; Terms of Office. The Council shall be composed of five members elected for staggered terms of four years or until their successors are elected and qualified.

"Section 2.3. Mayor; Term of Office; Duties. The Mayor shall be elected for a term of four years or until his or her successor is elected and qualified; shall be the official head of the City government and preside at meetings of the Council; shall have the right to vote only when there is an equal division on any question or matter before the Council; and shall exercise the powers and duties conferred by law or as directed by the Council.

"Section 2.4. Mayor Pro Tempore. The Mayor shall appoint from among the members of the Council one of its members as Mayor Pro Tempore to perform the duties of the Mayor during his or her absence

or disability, in accordance with general law.

"Section 2.5. Meetings. In accordance with general law, the Council shall establish a suitable time and place for its regular meetings. Special and emergency meetings may be held as provided by general law.

"Section 2.6. Ordinances and Resolutions. The adoption, amendment, repeal, pleading and proving of City ordinances and resolutions shall be in accordance with general law. All ordinances and resolutions shall be effective upon adoption unless otherwise provided.

"Section 2.7. Voting Requirements; Quorum. Official actions of the Council and all votes shall be taken in accordance with applicable provisions of general law, particularly G.S. 160A-75. A majority of the members of the Council, excluding vacancies, shall constitute a quorum.

"Section 2.8. Compensation; Qualifications for Office; Vacancies. The compensation and qualifications of the Mayor and Council members shall be in accordance with general law. Vacancies that occur in any elective office of the City shall be filled by appointment of the Council for the remainder of the unexpired term.

"ARTICLE III. ELECTIONS

"Section 3.1. Regular Municipal Elections. Regular municipal elections shall be held in each odd-numbered year in accordance with the uniform municipal election laws of North Carolina. Elections shall be conducted and the results determined on a partisan basis as provided in G.S. 163-291.

"Election 3.2. Election of Council Members. The Council members serving on the date of ratification of this Charter shall serve until the expiration of their terms or until their successors are elected and qualified. In the regular municipal election in 1987, and every four years thereafter, there shall be elected three Council members to serve as provided in Article II of this Charter. In the regular municipal election in 1989, and every four years thereafter, there shall be elected two Council members to serve as provided in Article II.

"Section 3.3. Election of the Mayor. The Mayor serving on the date of ratification of this Charter shall serve until the expiration of his or her term. At the municipal election in 1989 and every four years thereafter, there shall be elected a Mayor to serve as provided in Article II.

"Section 3.4. Special Elections and Referendums. Special elections and referendums may be held only as provided by general law or applicable local acts of the General Assembly.

"ARTICLE IV. ORGANIZATION AND ADMINISTRATION

"Section 4.1. Form of Government. The City shall operate under the council-manager form of government, in accordance with Chapter 160A, Article 7, Part 2 of the General Statutes.

"Section 4.2. City Manager. The Council shall appoint a City Manager who shall be responsible for the administration of all departments of the City government. The City Manager shall have all the powers and duties conferred by general law, except as expressly limited by the provisions of this Charter. No person elected mayor or to membership on the Council shall, subsequent to such election, be eligible for appointment as City Manager until one year has elapsed following the expiration of the term for which he or she was elected.

"Section 4.3. City Clerk. The Council shall appoint a City Clerk to keep a journal of the proceedings of the Council; to maintain official records and documents; to give notice of meetings; and to perform such other duties required by law or as the Council may direct.

"Section 4.4. City Tax Collector. The Council shall appoint a Tax Collector pursuant to G.S. 105-349 to collect all taxes owed to the City, subject to general law, this Charter and City ordinances.

"Section 4.5. City Attorney. The Council shall appoint a City Attorney licensed to practice law in North Carolina. It shall be the duty of the City Attorney to represent the City, advise City officials and perform other duties required by law or as the Council may direct.

"Section 4.6. Other Administrative Officers and Employees. The Council may provide for appointment of other officers and employees, and may organize the City government as deemed appropriate, subject to the requirements of general law.

"ARTICLE V. SPECIAL ASSESSMENT PROVISIONS

"Section 5.1. Assessment for Street Improvements; Petition Unnecessary.

"A. In addition to any authority granted by general law, the Council is hereby authorized to order street improvements and to assess the costs thereof against abutting property in accordance with the provisions of this Article.

"B. The Council may order street improvements and assess the total costs thereof against abutting property, exclusive of the costs incurred at street intersections, according to one or more of the assessment bases set forth in Chapter 160A, Article 10 of the General Statutes without the necessity of a petition, upon the following findings of fact:

- (1) That the street improvement project does not exceed 1,200 linear feet; and
- (2) That such street or part thereof is unsafe for vehicular traffic or creates a safety or health hazard and it is in the public interest to make such improvements; or
- (3) That it is in the public interest to connect two streets or portions of a street already improved; or
- (4) That it is in the public interest to widen a street, or part thereof, which is already improved; provided that assessments for widening any street or portion of a street without a petition shall be limited to the cost of widening and otherwise improving such street in accordance with the street classification and improvement standards established by the City's thoroughfare or major street plan, as applied to the particular street or part thereof.

"C. For the purposes of this Article, the term 'street improvement' includes grading, regrading, surfacing, resurfacing, widening, paving, repaving, acquisition of right-of-way and construction or reconstruction of curbs, gutters and street drainage facilities.

"Section 5.2. Assessments for Sidewalk Improvement; Petition Unnecessary. In addition to any authority granted by general law, the Council is hereby authorized, without the necessity of petition, to order sidewalk improvements or repairs according to standards and specification of the City, and to assess the total costs thereof against abutting property, according to one or more of the assessment bases set forth in Chapter 160A, Article 10 of the General Statutes, provided that regardless of the assessment basis or bases employed, the Council may order the costs of sidewalk improvements made only on one side of a street to be assessed against property abutting both sides of such street.

"Section 5.3. Procedure; Effect of Assessments. In ordering street and sidewalk improvements without a petition and assessing the costs thereof under authority of this Article, the Council shall comply with the procedures required by Chapter 160A, Article 10 of the General Statutes, except those provisions relating to petitions of property owners and sufficiency thereof. The effect of the act of levying assessments under authority of this Article shall be the same as if assessments were levied under authority of Chapter 160A, Article 10

of the General Statutes."

Sec. 2. The purpose of this act is to revise the Charter of the City of Kinston and to consolidate certain acts concerning the property, affairs and government of the City. It is intended to continue without interruption those provisions of prior acts which are expressly consolidated into this act, so that all rights and liabilities which have accrued are preserved and may be enforced.

Sec. 3. This act does not repeal or affect any acts concerning the property, affairs or government of public schools, or acts validating official actions, proceedings, contracts or obligations of any kind.

Sec. 4. All acts in conflict with this act are repealed. The following acts, having served the purposes for which they were enacted or having been consolidated into this act, are expressly repealed:

- Chapter 837, Session Laws of 1986
- Chapter 94, Session Laws of 1983
- Chapter 127, Session Laws of 1981
- Chapter 203, Session Laws of 1975
- Chapter 185, Session Laws of 1971
- Chapter 1052, Session Laws of 1967
- Chapter 436, Session Laws of 1967
- Chapter 94, Session Laws of 1965
- Chapter 502, Session Laws of 1965
- Chapter 92, Session Laws of 1961
- Chapter 443, Session Laws of 1961
- Chapter 801, Session Laws of 1961
- Chapter 1119, Session Laws of 1961
- Chapter 447, Session Laws of 1957
- Chapter 1120, Session Laws of 1955
- Chapter 1170, Session Laws of 1955
- Chapter 1312, Session Laws of 1955
- Chapter 936, Session Laws of 1953
- Chapter 157, Session Laws of 1947
- Chapter 397, Session Laws of 1947
- Chapter 946, Session Laws of 1947
- Chapter 297, Session Laws of 1943
- Chapter 200, Public-Local Laws of 1941
- Chapter 14, Public-Local Laws of 1939, except for

Section 3

- Chapter 642, Public-Local Laws of 1937
- Chapter 530, Public-Local Laws of 1935
- Chapter 25, Private Laws of 1933

- Chapter 78, Private Laws of 1933
- Chapter 120, Private Laws of 1933
- Chapter 181, Private Laws of 1929
- Chapter 94, Private Laws of 1925
- Chapter 155, Private Laws of 1923
- Chapter 225, Private Laws of 1923
- Chapter 74, Private Laws of 1921
- Chapter 109, Private Laws of 1919
- Chapter 150, Private Laws of 1919
- Chapter 6, Private Laws of 1917
- Chapter 319, Private Laws of 1915, except for
- Section 1
- Chapter 202, Private Laws of 1913
- Chapter 205, Private Laws of 1913
- Chapter 578, Public-Local Laws of 1911
- Chapter 8, Private Laws of 1909
- Chapter 260, Private Laws of 1909
- Chapter 338, Private Laws of 1905
- Chapter 282, Private Laws of 1903
- Chapter 180, Private Laws of 1901
- Chapter 180, Private Laws of 1899
- Chapter 75, Private Laws of 1895
- Chapter 183, Private Laws of 1895
- Chapter 187, Private Laws of 1895
- Chapter 256, Private Laws of 1895
- Chapter 117, Private Laws of 1893
- Chapter 16, Private Laws of 1887
- Chapter 33, Private Laws of 1885
- Chapter 1, Private Laws of 1883, as to Kinston only
- Chapter 7, Private Laws of 1879
- Chapter 80, Private Laws of 1879, as to Kinston only
- Chapter 79, Public Laws of 1876-77
- Chapter 131, Private Laws of 1874-75
- Chapter 129, Private Laws of 1876-77
- Chapter 15, Private Laws of 1866, Special Session
- Chapter 21, Private Laws of 1866, Special Session, as
- to Kinston only, except that Section 2 is
- not repealed
- Chapter 23, Public Laws of 1865
- Chapter 224, Private Laws of 1858-59
- Chapter 324, Private Laws of 1850-51
- Chapter 226, Private Laws of 1848-49
- Chapter 137, Private Laws of 1835
- Chapter 118, Private Laws of 1832-33

Chapter 170, Private Laws of 1833-34

Chapter 41, Private Laws of 1826

Chapter 139, Private Laws of 1822

Chapter 46, Private Laws of 1817

Chapter 29, Private Laws of 1815

Chapter 90, Private Laws of 1809

Chapter 42, Private Laws of 1806

Chapter 35, Private Laws of 1795

Chapter 46, Private Laws of 1784

Chapter 13, Private Laws of 1762

Sec. 5. This act does not affect any rights or interests which arose under any provisions repealed by this act.

Sec. 6. All existing ordinances, resolutions and other provisions of the City of Kinston not inconsistent with the provisions of this act shall continue in effect until repealed or amended.

Sec. 7. No action or proceeding pending on the effective date of this act by or against the City or any of its departments or agencies shall be abated or otherwise affected by this act.

Sec. 8. If any provision or application of this act is held invalid, such invalidity shall not affect other provisions or applications of this act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

Sec. 9. Whenever a reference is made in this act to a particular provision of the General Statutes, and such provision is later amended, repealed, superseded or recodified, the reference shall be deemed amended to refer to the amended General Statute, or to the General Statute which most clearly corresponds to the statutory provision which is repealed, superseded or recodified.

Sec. 10. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 8th day of May, 1987.

H.B. 661

CHAPTER 170

AN ACT TO AUTHORIZE THE TOWN OF BOONE TO LEVY A ROOM OCCUPANCY AND TOURISM DEVELOPMENT TAX.

The General Assembly of North Carolina enacts:

Section 1. Occupancy tax. (a) Authorization and scope. The Boone Town Council may by resolution, after not less than 10 days' public notice and after a public hearing held pursuant thereto, levy a room occupancy tax of three percent (3%) of the gross receipts derived from the rental of any room, lodging, or similar

accommodation furnished by a hotel, motel, inn, or similar place within the corporate limits of the town that is subject to sales tax imposed by the State under G.S. 105-164.4(3). This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations.

(b) Collection. Every operator of a business subject to the tax levied under this section shall, on and after the effective date of the levy of the tax, collect the tax. This tax shall be collected as part of the charge for furnishing a taxable accommodation. The tax shall be stated and charged separately from the sales records, and shall be paid by the purchaser to the operator of the business as trustee for and on account of the town. The tax shall be added to the sales price and shall be passed on to the purchaser instead of being borne by the operator of the business. The town shall design, print, and furnish to all appropriate businesses and persons in the town the necessary forms for filing returns and instructions to ensure the full collection of the tax. An operator of a business who collects the occupancy tax levied under this section may deduct from the amount remitted to the town a discount of three percent (3%) of the amount collected.

(c) Administration. The town shall administer a tax levied under this section. A tax levied under this section is due and payable to the town finance officer in monthly installments on or before the 15th day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the 15th day of each month, prepare and render a return on a form prescribed by the town. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied.

A return filed with the town finance officer under this section is not a public record as defined by G.S. 132-1 and may not be disclosed except as required by law.

(d) Penalties. A person, firm, corporation, or association who fails or refuses to file the return required by this section shall pay a penalty of ten dollars (\$10.00) for each day's omission. In case of failure or refusal to file the return or pay the tax for a period of 30 days after the time required for filing the return or for paying the tax, there shall be an additional tax, as a penalty, of five percent (5%) of the tax due in addition to any other penalty, with an additional tax of five percent (5%) for each additional month or fraction thereof until the tax is paid.

Any person who willfully attempts in any manner to evade a tax imposed under this section or who willfully fails to pay the tax or make and file a return shall, in addition to all other penalties provided by law, be guilty of a misdemeanor and shall be punishable by a fine not to exceed one thousand dollars (\$1,000), imprisonment not to exceed six months, or both. The town council may, for good cause shown, compromise or forgive the penalties imposed by this subsection.

(e) Distribution and use of tax revenue. The Town of Boone shall, on a quarterly basis, remit sixty percent (60%) of the net proceeds of the occupancy tax to the Boone Tourism Development Authority. The Authority may spend funds remitted to it under this subsection only to further the development of travel, tourism, and conventions for the Town of Boone. The Town of Boone may deposit the remainder of the net proceeds in its general funds to be used for any lawful purpose. As used in this subsection, "net proceeds" means gross proceeds less the cost to the town of administering and collecting the tax, as determined by the finance officer.

(f) Effective date of levy. A tax levied under this section shall become effective on the date specified in the resolution levying the tax. That date must be the first day of a calendar month, however, and may not be earlier than the first day of the second month after the date the resolution is adopted.

(g) Repeal. A tax levied under this section may be repealed by a resolution adopted by the Boone Town Council. Repeal of a tax levied under this section shall become effective on the first day of a month and may not become effective until the end of the fiscal year in which the repeal resolution was adopted. Repeal of a tax levied under this section does not affect a liability for a tax that was attached before the effective date of the repeal, nor does it affect a right to a refund of a tax that accrued before the effective date of the repeal.

Sec. 2. Tourism Development Authority. (a) Appointment and membership. When the town council adopts a resolution levying a room occupancy tax under this act, it shall also adopt a resolution creating the Boone Tourism Development Authority, which shall be a public authority under the Local Government Budget and Fiscal Control Act. The Authority shall be composed of seven voting members appointed by the Boone Town Council as follows:

- (1) Two residents of Boone who are owners or operators of hotels, motels, or other taxable tourist accommodations;
- (2) Two residents of Boone who have demonstrated an interest in tourism development and who do not own or operate hotels, motels, or other taxable tourist accommodations;

- (3) Two residents of Boone who are members of the Boone Chamber of Commerce; and
- (4) One member of the Boone Town Council.

The Finance Officer for the Town of Boone shall be the ex officio finance officer of the Authority but shall not be a member of the authority.

The members of the Authority shall serve without compensation and shall serve for a term of three years, except that the town council shall designate three of the initial appointees to serve two-year terms. Vacancies shall be filled in the same manner as original appointments and members appointed to fill vacancies shall serve for the remainder of the unexpired term. The Authority shall elect from its membership a chair; the Authority shall meet at the call of the chair and shall adopt rules of procedure to govern its meetings.

(b) Powers and duties. The Authority may contract with any person, firm, or organization to advise it and assist it in carrying out its duty to promote travel, tourism, and conventions for the Town of Boone.

(c) Reports. The Authority shall report quarterly and at the close of the fiscal year to the town council on its receipts and expenditures for the preceding quarter and for the year in such detail as the Council may require.

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 11th day of May, 1987.

H.B. 629

CHAPTER 171

AN ACT TO AUTHORIZE THE TOWN OF BLOWING ROCK TO
LEVY A ROOM OCCUPANCY AND TOURISM
DEVELOPMENT TAX.

The General Assembly of North Carolina enacts:

Section 1. Occupancy tax. (a) Authorization and scope. The Blowing Rock Town Council may by resolution, after not less than 10 days' public notice and after a public hearing held pursuant thereto, levy a room occupancy tax of three percent (3%) of the gross receipts derived from the rental of any room, lodging, or similar accommodation furnished by a hotel, motel, inn, or similar place within the corporate limits of the town that is subject to sales tax imposed by the State under G.S. 105-164.4(3). This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations.

(b) Collection. Every operator of a business subject to the tax levied under this section shall, on and after the effective date of the levy of the tax, collect the tax. This tax shall be collected as part of the charge for furnishing a taxable accommodation. The tax shall be stated and charged separately from the sales records, and shall be paid by the purchaser to the operator of the business as trustee for and on account of the town. The tax shall be added to the sales price and shall be passed on to the purchaser instead of being borne by the operator of the business. The town shall design, print, and furnish to all appropriate businesses and persons in the town the necessary forms for filing returns and instructions to ensure the full collection of the tax. An operator of a business who collects the occupancy tax levied under this section may deduct from the amount remitted to the town a discount of three percent (3%) of the amount collected.

(c) Administration. The town shall administer a tax levied under this section. A tax levied under this section is due and payable to the town finance officer in monthly installments on or before the 15th day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the 15th day of each month, prepare and render a return on a form prescribed by the town. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied.

A return filed with the town finance officer under this section is not a public record as defined by G.S. 132-1 and may not be disclosed except as required by law.

(d) Penalties. A person, firm, corporation, or association who fails or refuses to file the return required by this section shall pay a penalty of ten dollars (\$10.00) for each day's omission. In case of failure or refusal to file the return or pay the tax for a period of 30 days after the time required for filing the return or for paying the tax, there shall be an additional tax, as a penalty, of five percent (5%) of the tax due in addition to any other penalty, with an additional tax of five percent (5%) for each additional month or fraction thereof until the tax is paid.

Any person who willfully attempts in any manner to evade a tax imposed under this section or who willfully fails to pay the tax or make and file a return shall, in addition to all other penalties provided by law, be guilty of a misdemeanor and shall be punishable by a fine not to exceed one thousand dollars (\$1,000), imprisonment not to exceed six months, or both. The town council may, for good cause shown, compromise or forgive the penalties imposed by this subsection.

(e) Distribution and use of tax revenue. The Town of Blowing Rock shall retain from the gross proceeds of the tax an amount sufficient to pay its direct costs for administrative and collection expenses, not to exceed three percent (3%) of the gross proceeds. The town council shall, at least once annually, conduct a hearing on the proposed use of the net proceeds of the tax. The amount of the net proceeds shall be reported at the hearing. After the hearing, the town council may remit twenty percent (20%) of the net proceeds reported at the hearing to the Blowing Rock Chamber of Commerce. The Blowing Rock Chamber of Commerce may use the funds remitted to it pursuant to this subsection only to promote tourism within the Town of Blowing Rock. The remainder of the net proceeds may be used by the town to enhance the ability of the town to attract tourism, except that the town may not expend any of the net proceeds for general fund operating expenses that are not tourist-related or for water and sewer capital or operating expenses that are not tourist-related.

(f) Effective date of levy. A tax levied under this section shall become effective on the date specified in the resolution levying the tax. That date must be the first day of a calendar month, however, and may not be earlier than the first day of the second month after the date the resolution is adopted.

(g) Repeal. A tax levied under this section may be repealed by a resolution adopted by the Blowing Rock Town Council. Repeal of a tax levied under this section shall become effective on the first day of a month and may not become effective until the end of the fiscal year in which the repeal resolution was adopted. Repeal of a tax levied under this section does not affect a liability for a tax that was attached before the effective date of the repeal, nor does it affect a right to a refund of a tax that accrued before the effective date of the repeal.

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 11th day of May, 1987.

H.B. 626

CHAPTER 172

AN ACT AUTHORIZING HENDERSON COUNTY TO LEVY A ROOM OCCUPANCY AND TOURISM DEVELOPMENT TAX.

The General Assembly of North Carolina enacts:

Section 1. Section 1(a) of Chapter 929 of the 1985 Session Laws (Regular Session 1986) reads as rewritten:

"(a) The Cities of Hickory and Conover may by joint resolution, after not less than 10 days public notice and after a public hearing held pursuant thereto, levy a room occupancy and tourism development tax. ~~The Cities City of Goldsboro and Hendersonville~~ may by resolution, after not less than 10 days public notice and after a public hearing held pursuant thereto, levy a room occupancy and tourism development tax."

Sec. 2. Section 7(a) of Chapter 929 of the 1985 Session Laws (Regular Session 1986) reads as rewritten:

"(a) When the Cities of Hickory, Goldsboro and Conover adopt a resolution levying a tax under this act, they shall also adopt a resolution creating a Tourism Development Advisory Council. When the City of Goldsboro ~~or Hendersonville~~ adopts a resolution levying a tax under this act, it shall adopt a resolution creating a Tourism Development Advisory Council. The membership of the Hickory/Conover Tourism Development Advisory Council, ~~and the membership of the Goldsboro Tourism Development Advisory Council, and the membership of the Hendersonville Tourism Development Advisory Council~~ are as follows:

- (1) Three owners/operators of hotels, motels, or other taxable accommodations in the Cities of Hickory and Conover; two of whom shall be appointed by the Hickory City Council and one appointed by Conover City Council. The City of Goldsboro shall appoint three owners/operators of hotels, motels, or other taxable tourism accommodations to its Tourism Development Advisory Council. ~~The City of Hendersonville shall appoint three owners/operators of hotels, motels, or other taxable tourism accommodations to its Tourism Development Advisory Council.~~
- (2) Three individuals who have demonstrated an interest in convention and tourism development and do not own or operate hotels, motels, or other taxable tourism accommodations, one of whom shall be appointed by the Catawba County Chamber of Commerce, one appointed by the Hickory City Council and one by the Conover City Council. The City of Goldsboro shall appoint three individuals who have demonstrated an interest in conventions and tourism development in the Goldsboro area, and who do not own or operate hotels, motels, or other taxable tourism accommodations. ~~The City of Hendersonville shall appoint to its Tourism Development Advisory Council three individuals who have demonstrated an interest in conventions and tourism development in the Hendersonville area, and who do not own or operate hotels, motels, or other taxable tourism accommodations.~~

- (3) Three ex officio members shall be the City Managers of Hickory and Conover and Executive Vice President of the Catawba County Chamber of Commerce. If other municipal corporations levy the tax and allocate same to the Council, their chief appointed official, as defined in N.C. General Statutes, Chapter 160A, Article 7, Part 2, shall also serve as an ex officio member of the Council. The City of Goldsboro shall appoint three ex officio members which shall include the city manager, the executive vice-president of the Goldsboro Chamber of Commerce, and the mayor of the City of Goldsboro. ~~The City of Hendersonville shall appoint the following three ex officio members to its Tourism Development Advisory Council: a member of the Henderson County Board of Commissioners, the executive vice-president of The Greater Hendersonville Chamber of Commerce, and the mayor of the City of Hendersonville.~~

Sec. 3. Section 9(a) of Chapter 929 of the 1985 Session Laws (Regular Session 1986) reads as rewritten:

"(a) The Cities of Hickory and Conover may by joint resolution repeal the levy of the room occupancy tax levied by them. ~~The Cities City of Goldsboro and Hendersonville~~ may by resolution repeal the levy of the room occupancy tax levied by ~~them~~ it. No repeal of taxes levied under this act shall be effective until the end of the fiscal year in which the repeal resolution was adopted."

Sec. 4. Chapter 962 of the 1985 Session Laws (Regular Session 1986) is repealed.

Sec. 5. Occupancy Tax. (a) Authorization and Scope. The Board of Commissioners of Henderson County may by resolution, after not less than 10 days' public notice and after a public hearing held pursuant thereto, levy a room occupancy tax of no less than three percent (3%) nor more than five percent (5%) of the gross receipts derived from the rental of any room, lodging, or similar accommodation furnished by a hotel, motel, inn, or similar place within the county that is subject to sales tax imposed by the State under G.S. 105-164.4(3). This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations.

(b) Collection. Every operator of a business subject to the tax levied under this act shall, on and after the effective date of the levy of the tax, collect the tax. This tax shall be collected as part of the charge for furnishing a taxable accommodation. The tax shall be stated and charged separately from the sales records, and shall be paid by the purchaser to the operator of the business as trustee for and on account of the county. The tax shall be added to the sales price and

shall be passed on to the purchaser instead of being borne by the operator of the business. The county shall design, print, and furnish to all appropriate businesses and persons in the county the necessary forms for filing returns and instructions to ensure the full collection of the tax.

(c) Administration. The county shall administer a tax levied under this act. A tax levied under this act is due and payable to the county finance officer in monthly installments on or before the 15th day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the 15th day of each month, prepare and render a return on a form prescribed by the county. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied.

A return filed with the county finance officer under this act is not a public record as defined by G.S. 132-1 and may not be disclosed except as required by law.

(d) Penalties. A person, firm, corporation, or association who fails or refuses to file the return required by this act shall pay a penalty of ten dollars (\$10.00) for each day's omission. In case of failure or refusal to file the return or pay the tax for a period of 30 days after the time required for filing the return or for paying the tax, there shall be an additional tax, as a penalty, of five percent (5%) of the tax due in addition to any other penalty, with an additional tax of five percent (5%) for each additional month or fraction thereof until the tax is paid.

Any person who willfully attempts in any manner to evade a tax imposed under this act or who willfully fails to pay the tax or make and file a return shall, in addition to all other penalties provided by law, be guilty of a misdemeanor and shall be punishable by a fine not to exceed one thousand dollars (\$1,000), imprisonment not to exceed six months, or both. The board of commissioners may, for good cause shown, compromise or forgive the penalties imposed by this subsection.

(e) Use of Tax Revenue. The county shall place the net proceeds collected from a tax levied under this act in a special Travel and Tourism Fund. Revenue in this fund may be used only to promote travel and tourism in the county. This fund will be administered by the Henderson Travel and Tourism Committee. As used in this subsection, "net proceeds" means gross proceeds less five percent (5%) of the gross proceeds which the county may retain to defray the cost of administering and collecting the tax.

The scope of promotion of travel and tourism in the county may include the following:

(1) Contracting with any person, firm, or agency to advise and assist in travel and tourism promotion.

(2) Advertising via appropriate media.

(3) Assisting in the initial funding and possible annual subsidy of a fine arts center or other similar facility which could logically be expected to promote tourism in the county.

(4) Promoting special events which would bring tourists to the county.

(f) Effective Date of Levy. A tax levied under this act shall become effective on the date specified in the resolution levying the tax. That date must be the first day of a calendar month, however, and may not be earlier than the first day of the second month after the date the resolution is adopted.

(g) Repeal. A tax levied under this act may be repealed by a resolution adopted by the board of commissioners of the county. Repeal of a tax levied under this act does not affect a liability for a tax that attached before the effective date of the repeal, nor does it affect a right to a refund of a tax that accrued before the effective date of the repeal.

Sec. 6. Henderson Travel and Tourism Committee. When the board of commissioners adopts a resolution levying a room occupancy tax under this act, it shall also adopt a resolution creating the Henderson Travel and Tourism Committee, which shall be a public authority under the Local Government Budget and Fiscal Control Act. The Committee shall consist of nine voting members as follows:

(1) Four members who are registered to vote in Henderson County, appointed by the Henderson County Board of Commissioners;

(2) Four members who are registered to vote in Henderson County, appointed by the Hendersonville City Council; and

(3) The President of the Greater Hendersonville Chamber of Commerce, or his designee, to serve ex officio.

The board of commissioners shall designate one member of the Committee as chair and shall determine the compensation, if any, to be paid to members of the Committee. The Committee shall meet at the call of the chair and shall adopt rules of procedure to govern its meetings. The finance officer for Henderson County shall be the ex officio finance officer of the Committee. The Committee shall administer the Travel and Tourism Fund as provided in Section 1(e) of this act. The Committee shall report quarterly and at the close of the fiscal year to the board of commissioners on its expenditures for the preceding quarter and for the year in such detail as the board may require.

Sec. 7. Repeal of a tax levied under Chapter 929 or 962 of the 1985 Session Laws (Regular Session 1986) does not affect a liability for a tax that attached before the effective date of this act, nor does it affect a right to a refund that accrued before the effective date of this act.

Sec. 8. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 11th day of May, 1987.

H.B. 525

CHAPTER 173

AN ACT TO INCREASE THE HENDERSON FIREMEN'S SUPPLEMENTAL RETIREMENT SYSTEM BENEFITS.

The General Assembly of North Carolina enacts:

Section 1. Section 1 of Chapter 111 of the 1981 Session Laws reads as rewritten:

"Section 1. Section 4 of Chapter 810 of the Session Laws of 1959, as amended, is further amended by deleting the sixteenth sentence, which reads: "Each retired fireman receiving supplemental benefit in accordance with this Act shall receive the same amount of supplemental benefit per month; provided that the maximum payment to any retired member of the Henderson City Fire Department from said Fund shall be fifty dollars (\$50.00) per month.", and by substituting the following two sentences: "Each retired fireman receiving supplemental benefit in accordance with this act shall receive the same amount of supplemental benefit per month. The maximum payment to any retired member of the Henderson City Fire Department from the Fund is fifty dollars (\$50.00) per month through December 31, 1980, ~~and~~ one hundred dollars (\$100.00) per month ~~thereafter through December 31, 1986, and two hundred dollars (\$200.00) per month thereafter.~~"

Sec. 2. Nothing in this act creates a liability for the Henderson Firemen's Supplemental Retirement System unless there are sufficient current assets available in the System to pay fully for the liability.

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 11th day of May, 1987.

H.B. 389

CHAPTER 174

AN ACT TO AMEND THE FIREMEN'S RELIEF FUND TO PROVIDE ADDITIONAL BENEFITS.

The General Assembly of North Carolina enacts:

Section 1. Chapter 118-6 of the General Statutes of North Carolina is amended by inserting in the last paragraph after the third sentence, which ends with the word "office", a new sentence to read:

"The cost of this bond may be deducted by the Insurance Commissioner from the receipts collected pursuant to G.S. 118-2 before distribution is made to local relief funds."

Sec. 2. G.S. 118-7 is amended by adding after subdivision (2) a new subdivision to read:

"(2.1) To provide assistance, upon approval by the Secretary of the State Firemen's Association, to a destitute member fireman who has served honorably for at least five years."

Sec. 3. G.S. 118-7(5) is amended by deleting the word "additional".

Sec. 4. G.S. 118-12 is amended by rewriting the last sentence to read:

"Notwithstanding the above provisions, the Executive Board of the North Carolina State Firemen's Association is hereby authorized to grant educational scholarships to the children of members, to subsidize premium payments of members over 65 years of age to the Firemen's Fraternal Insurance Fund of the North Carolina State Firemen's Association, and to provide accidental death and dismemberment insurance for members of those fire departments not eligible for benefits pursuant to standards of certification adopted by the State Firemen's Association for the use of local relief funds."

Sec. 5. G.S. 118-6 is amended in the last paragraph by rewriting the third sentence to read: "The treasurer of said board of trustees shall give a good and sufficient surety bond in a sum equal to the amount of moneys in his hand, to be approved by the Commissioner of Insurance."

Sec. 6. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 11th day of May, 1987.

H.B. 381

CHAPTER 175

AN ACT TO AUTHORIZE PASQUOTANK COUNTY AND THE CITY OF ELIZABETH CITY TO LEVY OCCUPANCY TAXES.

The General Assembly of North Carolina enacts:

Section 1. Pasquotank occupancy tax. (a) Authorization and Scope. The Pasquotank County Board of Commissioners may, by resolution, after not less than 10 days' public notice and after a hearing held pursuant thereto, levy a room occupancy tax of no more than three percent (3%) of the gross receipts derived from the rental in Pasquotank County of any room, lodging, or similar accommodation subject to sales tax under G.S. 105-164.4(3).

This tax does not apply to accommodations furnished by nonprofit charitable, educational, benevolent, or religious organizations when furnished in furtherance of their nonprofit purpose. This tax is in addition to any State or local sales tax.

(b) Collection. Every operator of a business subject to the tax levied under this section shall, on and after the effective date of the levy of the tax, collect the tax. This tax shall be collected as part of the charge for furnishing a taxable accommodation. The tax shall be stated and charged separately on the sales records, and shall be paid by the purchaser to the operator of the business as trustee for and on account of Pasquotank County. The tax shall be added to the sales price and shall be passed on to the purchaser instead of being borne by the operator of the business. The Pasquotank County Finance Officer shall design, print, and furnish to all appropriate businesses and persons in the county the necessary forms for filing returns and instructions to ensure the full collection of the tax.

An operator of a business who collects the occupancy tax levied under this section may deduct from the amount remitted by him to the county a discount of three percent (3%) of the amount collected as reimbursement for the expenses incurred in collecting the tax.

(c) Administration. The county shall administer a tax levied under this section. A tax levied under this section is due and payable to the county finance officer in monthly installments on or before the 15th day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the 15th day of each month, prepare and render a return on a form prescribed by the county. The return shall state the total gross receipts derived in the preceding month from rentals and sales upon which the tax is levied. A return filed with the county finance officer under this section is not a public record as defined by G.S. 132-1 and may not be disclosed except as required by law.

(d) Penalties. A person, firm, corporation, or association who fails or refuses to file the return required by this section shall pay a penalty of ten dollars (\$10.00) for each day's omission. In case of failure or refusal to file the return or pay the tax for a period of 30

days after the time required for filing the return or for paying the tax, there shall be an additional tax, as a penalty, of five percent (5%) of the tax due for each additional month or fraction thereof until the tax is paid.

Any person who willfully attempts in any manner to evade a tax imposed under this section or who willfully fails to pay the tax or make and file a return shall, in addition to all other penalties provided by law, be guilty of a misdemeanor and shall be punishable by a fine not to exceed one thousand dollars (\$1,000) and imprisonment not to exceed six months, or both. The board of commissioners may, for good cause shown, compromise or forgive the penalties imposed by this subsection.

(e) Use and Distribution of Tax Revenue. After the levy of a tax under this section and until the end of the eighth fiscal year after an occupancy tax was first levied under this act, whether pursuant to this section or Section 2 of this act, the county shall, on a quarterly basis, remit the net proceeds of the tax levied under this section to the City of Elizabeth City. The city may spend funds remitted to it under this subsection only to develop, promote, and advertise travel and tourism in Elizabeth City and Pasquotank County, to sponsor tourist-oriented events and activities, to operate and maintain museums and historic sites, or to construct and maintain public facilities.

After the levy of a tax under this section and beginning in the ninth fiscal year after an occupancy tax was first levied under this act, whether under this section or Section 2 of this act, the county shall, on a quarterly basis, remit to the City of Elizabeth City one-half (1/2) of the net proceeds of the tax levied under this section collected on accommodations located in the corporate limits of the city. The remainder of the proceeds of the tax shall be retained by the county. The city and the county may spend the proceeds of the tax only to develop, promote, and advertise travel and tourism in Elizabeth City and Pasquotank County, to sponsor tourist-oriented events and activities, to operate and maintain museums and historic sites, or to construct and maintain public facilities.

The county, or a town or city that receives revenue under this subsection may contract with a nonprofit organization to undertake or carry out the activities and programs for which the revenue may be expended. All contracts entered into with nonprofit organizations shall require an annual financial audit of any funds expended and a performance audit of contractual obligations.

As used in this subsection, "net proceeds" means gross proceeds less the direct cost to the county of administering and collecting the tax, not to exceed three percent (3%) of the amount collected.

(f) Repeal. A tax levied under this section may be repealed by a resolution adopted by the Pasquotank County Board of Commissioners. Repeal of a tax levied under this section shall become effective on the first day of a month and may not become effective until the end of the fiscal year in which the repeal resolution was adopted. Repeal of a tax levied under this section does not affect a liability for a tax that attached before the effective date of the repeal, nor does it affect a right to a refund of a tax that accrued before the effective date of the repeal.

Sec. 2. Elizabeth City occupancy tax. (a) Authorization; Scope; Administration. If the Pasquotank County Board of Commissioners has not levied the tax authorized by Section 1 of this act or has levied the tax at a rate of less than three percent (3%), the Elizabeth City City Council may, by ordinance, levy a room occupancy tax at a rate that does not exceed three percent (3%) when combined with the Pasquotank County occupancy tax rate, if any.

This tax shall apply to the same accommodations that are taxable under Section 1 of this act and shall be collected and administered in the same manner as the tax authorized by that section, unless this section specifies otherwise. In applying the provisions of Section 1 to a tax levied by the Elizabeth City City Council under this section, however, all references in Section 1 to Pasquotank County or an official of Pasquotank County shall be construed to mean the City of Elizabeth City and the city counterpart to the county official. Accordingly, the Elizabeth City Finance Officer shall collect an occupancy tax levied by the city.

(b) Distribution of Revenue. After the levy of a tax under this section and until the end of the eighth fiscal year after an occupancy tax was first levied under this act, whether pursuant to this section or Section 1 of this act, the city shall retain the proceeds of the tax levied under this section. After the levy of a tax under this section and beginning in the ninth fiscal year after an occupancy tax was first levied under this act, whether pursuant to this section or Section 1 of this act, the city shall, on a quarterly basis, remit to Pasquotank County one-half (1/2) of the net proceeds of the tax levied under this section collected on accommodations located in the corporate limits of the city. The remainder of the proceeds of the tax shall be retained by the city. The city and the county may spend the proceeds of the tax only to develop, promote, and advertise travel and tourism in Elizabeth City, to sponsor tourist-oriented events and activities, to operate and maintain museums and historic sites, or to construct and maintain

public facilities.

As used in this subsection, "net proceeds" means gross proceeds less the cost to the city of administering and collecting the tax, not to exceed three percent (3%) of the amount collected.

Sec. 3. Effect of county tax on previously levied city tax. If the City of Elizabeth City levies an occupancy tax under Section 2 of this act, and the Pasquotank County Board of Commissioners subsequently adopts a resolution levying an occupancy tax in Pasquotank County under Section 1 of this act, the occupancy tax levied by the City of Elizabeth City shall be repealed as of the effective date of the county levy if the county levies an occupancy tax at the rate of three percent (3%), and shall be reduced by the amount that the combined county and city occupancy tax rates exceed three percent (3%) if the county rate is less than three percent (3%).

Sec. 4. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 11th day of May, 1987.

H.B. 270

CHAPTER 176**AN ACT TO MAKE CHANGES IN THE NORTH WILKESBORO
FIREMEN'S SUPPLEMENTARY FUND.**

The General Assembly of North Carolina enacts:

Section 1. Section 2 of Chapter 287, 1981 Session Laws, is rewritten to read:

"Sec. 2. Section 5.2(d) of the Charter of the Town of North Wilkesboro, as amended by Chapter 854, Session Laws of 1979, is rewritten to read:

'(d) Any member who has served 20 years as a fireman in the North Wilkesboro Fire Department and has attained the age of 55 is entitled to receive a pension from the "Supplementary Pension Fund" in the amount of one hundred dollars (\$100.00) per month.'

Sec. 2. Retired members of the fire department who were receiving monthly pensions under the provisions of Section 5.2(d) of the Charter of the Town of North Wilkesboro, Chapter 263, 1977 Session Laws, as amended by Chapter 854, 1979 Session Laws, as it existed prior to the effective date of this act, are entitled to receive in lieu thereof monthly pensions in the amount specified in Section 2 of this act, beginning with the first full calendar month following the effective date of this act.

Sec. 3. Section 5.2(k) of Chapter 287, 1981 Session Laws, is amended by deleting the phrase "one thousand two hundred dollars (\$1,200)" both places it appears and substituting "two thousand four hundred dollars (\$2,400)".

Sec. 4. Nothing in this act creates a liability for the North Wilkesboro Supplementary Pension Fund unless there are sufficient current assets available in the Fund to pay fully for the liability.

Sec. 5. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 11th day of May, 1987.

H.B. 191

CHAPTER 177

AN ACT TO MAKE CLARIFYING TECHNICAL CHANGES IN
THE RETIREMENT AND PENSION BENEFITS FOR STATE
AND CERTAIN LOCAL GOVERNMENT EMPLOYEES.

The General Assembly of North Carolina enacts:

Section 1. (a) Article 1A of Chapter 120 of the General Statutes is amended by adding a new section to the end designated as G.S. 120-4.30; Article 3 of Chapter 128 of the General Statutes is amended by adding a new section to the end designated as G.S. 128-38.1; Article 1 of Chapter 135 of the General Statutes is amended by adding a new section to the end designated as G.S. 135-18.6; and, Article 4 of Chapter 135 of the General Statutes is amended by adding a new section to the end designated as G.S. 135-73.

(b) The catchline and text of each new section created under subsection (a) above reads as follows:

"Termination or partial termination; Discontinuance of contributions.--
In the event of the termination or partial termination of the Retirement System or in the event of complete discontinuance of contributions under the Retirement System, the rights of all affected members to benefits accrued to the date of such termination, partial termination, or discontinuance, to the extent funded as of such date, or the amounts credited to the members' accounts, shall be nonforfeitable and fully vested."

(c) This section shall be effective upon the first day of the calendar month following the State's receipt of a favorable letter of determination or ruling from the Internal Revenue Service, United States Department of Treasury, that the Retirement Systems are qualified trusts under Section 401(a) of the Internal Revenue Code of 1954 as amended.

Sec. 2. Effective July 1, 1986, G.S. 143-27.2 is amended in the second sentence of the second paragraph by deleting the number "25" and substituting the number "20".

Sec. 3. Effective January 1, 1987, G.S. 143-166.84(b) is amended by adding immediately after the word "section" the phrase "relating to age, service, and retirement status".

Sec. 4. Effective January 1, 1987, G.S. 143-166.85(a) is amended in the third sentence by inserting the phrase "at retirement" between the words "allowance" and "from".

Sec. 5. Unless otherwise specified, this act is effective upon ratification.

In the General Assembly read three times and ratified this the 11th day of May, 1987.

H.B. 89

CHAPTER 178

AN ACT TO AMEND THE LAW RELATING TO THE MONTHLY
BENEFITS OF THE GREENSBORO FIREMEN'S
SUPPLEMENTAL RETIREMENT SYSTEM.

The General Assembly of North Carolina enacts:

Section 1. Section 4, Chapter 899 of the 1953 Session Laws, as amended by Section 1, Chapter 289 of the 1979 Session Laws, is further amended by deleting the phrase "eighty dollars (\$80.00)" and by substituting the phrase "one hundred thirty dollars (\$130.00)".

Sec. 2. Nothing in this act creates a liability for the Greensboro Firemen's Supplemental Retirement System unless there are sufficient current assets in the System to pay fully for the liability.

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 11th day of May, 1987.

S.B. 387

CHAPTER 179

AN ACT CONCERNING VOLUNTARY SATELLITE
ANNEXATIONS BY THE CITY OF HICKORY.

The General Assembly of North Carolina enacts:

Section 1. G.S. 160A-58.1(b)(5) does not apply to the City of Hickory.

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 11th day of May, 1987.

H.B. 71

CHAPTER 180

AN ACT TO ESTABLISH THE LEGISLATIVE COMMITTEE ON NEW LICENSING BOARDS AND A REVIEW PROCESS FOR THE CREATION OF OCCUPATIONAL AND PROFESSIONAL LICENSING BOARDS.

The General Assembly of North Carolina enacts:

Section 1. Chapter 120 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 18A.

Review of Proposals to License
New Occupations and Professions.

"§ 120-149.1. *Findings and purpose.*--The General Assembly finds that the number of licensed occupations and professions has substantially increased and that licensing boards have occasionally been established without a determination that the police power of the State is reasonably exercised by the establishment of such licensing boards.

The General Assembly further finds that by establishing criteria and procedures for reviewing proposed licensing boards, it will be better able to evaluate the need for new licensing boards. To this end, it is the purpose of this Article to assure that no new licensing board shall be established unless the following criteria are met:

(1) The unregulated practice of the profession or occupation can substantially harm or endanger the public health, safety or welfare, and the potential for such harm is recognizable and not remote or dependent upon tenuous argument;

(2) The profession or occupation possesses qualities that distinguish it from ordinary labor;

(3) Practice of the profession or occupation requires specialized skill or training;

(4) A substantial majority of the public does not have the knowledge or experience to evaluate whether the practitioner is competent; and

(5) The public is not effectively protected by other means; and

(6) Licensure will not have a substantial adverse economic impact upon consumers of the practitioner's goods or services.

"§ 120-149.2. *Definitions.*--As used in this Article:

(1) 'Assessment report' means a report that initially describes the need for and the fiscal impact of a new licensing board.

(2) 'Committee' means the Legislative Committee on New Licensing Boards.

(3) 'Licensing' means a regulatory system that requires persons to meet certain qualifications before they are eligible to engage in a particular occupation or profession, but does not include a regulatory system that imposes certain qualifications as a condition for using or advertising specified titles or descriptions in connection with a particular occupation or profession, unless the restrictions on the use and advertisement of said titles is so broad as to effectively prohibit the practitioner from engaging in the profession or occupation without meeting the qualifications.

(4) 'New licensing board' includes each of the following:

- (i) a proposed new board with licensing authority over an occupation or profession; and
- (ii) an existing board with proposed licensing authority over an occupation or profession not previously licensed by the board; provided, however, that the Committee, in reviewing a proposal to license a profession or occupation under an existing board, shall not assess the need for the continued licensing of professions and occupations already within the board's jurisdiction.

(5) 'Supplementary report' means a report that assesses the changes proposed by an amendment or committee substitute which would substantially alter a legislative proposal to create a new licensing board and for which an assessment report has already been prepared.

"§ 120-149.3. *Assessment of new licensing boards.*—(a) Any legislative proposal introduced in the General Assembly after the effective date of this act proposing (1) the establishment of a new licensing board, or (2) a study of the need to establish a new licensing board, shall not be eligible for consideration on the floor of either house (other than first reading) or before any committee of either house of the General Assembly until a final assessment report has been issued pursuant to G.S. 120-149.4(e), with a copy of the report accompanying the proposal in accordance with the rules of the appropriate house.

(b) If the proposal to establish a new licensing board is first contained in a legislative proposal, the sponsor shall present a copy of the legislative proposal to the Legislative Committee on New Licensing Boards which shall prepare an assessment report. If the proposal is not in the form of a legislative proposal, the person or organization seeking to establish a new licensing board may obtain an assessment report from the Committee only if a legislator requests such a report.

(c) If a legislative proposal receives a favorable report but is not ratified during the biennial session in which it is introduced, a new assessment report shall be required before the same or a substantially similar legislative proposal may be considered after first reading or by

any committee during a subsequent biennial session of the General Assembly. If a proposal receives a favorable report but is not introduced as a legislative proposal, the favorable report shall expire at the adjournment of the biennial session coinciding with or following issuance of the final report.

(d) A preliminary assessment report shall be prepared and returned to the sponsor or requesting legislator as soon as possible and not later than 60 days after the Committee receives the request, provided that if the volume of requests makes preparation of all such reports impossible within that time, the Committee may extend the time for preparation of any report to a maximum of 90 days from the time the request is received. The Committee shall not consider any request until it has received the information required by G.S. 120-149.4(a).

(e) If an amendment or committee substitute to a legislative proposal is introduced, the appropriate committee chairman, the presiding officer of the appropriate house, or the sponsor of the proposal may request a supplementary report when, in the opinion of any of them, the amendment or committee substitute substantially alters the legislative proposal. The supplementary report shall be prepared and returned to the requesting individual, and to the sponsor, within 30 days after the Committee receives the request.

(f) Each assessment report shall be designated as either preliminary, final, or supplementary and shall not constitute any part of the expression of legislative intent proposed by the formation of a new licensing board. An unfavorable final report shall not bar further consideration of the proposal on the floor or by any committee of either house.

(g) The Committee shall make all reports, including supplementary reports, available to all members of the General Assembly. At least one copy of all preliminary, final, and supplementary reports shall be maintained in the Legislative Library for public inspection.

"§ 120-149.4. Procedure and criteria to be used in preparation of assessment reports.--(a) The Legislative Committee on New Licensing Boards shall conduct an evaluation of the need for each new licensing board.

If a legislator or other person or organization is seeking to establish a new licensing board, that legislator or other person or organization shall have the burden of demonstrating to the Committee that the criteria listed in G.S. 120-149.1 are met, and furnish the Committee additional information to show:

- (1) That the unregulated practice of the occupation or profession may be hazardous to the public health, safety, or welfare;
 - (2) The approximate number of people who would be regulated and the number of persons who are likely to utilize the services of the occupation or profession;
 - (3) That the occupational or professional group has an established code of ethics, a voluntary certification program, or other measures to ensure a minimum quality of service;
 - (4) That other states have regulatory provisions similar to the one proposed;
 - (5) How the public will benefit from regulation of the occupation or profession;
 - (6) How the occupation or profession will be regulated, including the qualifications and disciplinary proceedings to be applied to practitioners;
 - (7) The purpose of the proposed regulation and whether there has been any public support for licensure of the profession or occupation;
 - (8) That no other licensing board regulates similar or parallel activities;
 - (9) That the educational requirements for licensure, if any, are fully justified; and
 - (10) Any other information the Committee considers relevant to the proposed regulatory plan. The Committee shall adopt an appropriate form for use by applicants. The form shall contain a list of questions to be completed by the person or organization requesting the assessment report and a copy of this Article.
- (b) In preparing an assessment report with respect to a legislative proposal to establish a new licensing board, the Committee shall consider, but shall not be limited to considering, the factors listed in subsection (a). The report shall analyze the effects of the new licensing board and shall include the Committee's recommendation on whether the General Assembly should approve the new licensing board. The Committee shall make specific findings in its report on each of the following:
- (1) Whether the unregulated practice of the profession or occupation can substantially harm or endanger the public health, safety, or welfare, and whether the potential for such harm is recognizable and not remote or dependent upon tenuous argument;

- (2) Whether the profession or occupation possesses qualities that distinguish it from ordinary labor;
- (3) Whether practice of the profession or occupation requires specialized skill or training;
- (4) Whether a substantial majority of the public has the knowledge or experience to evaluate the practitioner's competence;
- (5) Whether the public can be effectively protected by other means; and
- (6) Whether licensure would have a substantial adverse economic impact upon consumers of the practitioner's goods or services.

(c) The Committee may also evaluate the legislative proposal itself in terms of its clarity, conciseness, conformity with existing statutes and general principles of administrative law, and specificity of the delegation of authority to promulgate rules and set fees.

(d) The Committee shall furnish a copy of the preliminary assessment report to the requesting legislator or sponsor at least seven days prior to the Committee's final meeting on the proposal, unless the sponsor or requesting legislator waives this requirement. The requesting legislator or sponsor shall have an opportunity at the final meeting to respond to the preliminary report.

(e) The Committee shall adopt a final assessment report on the proposal at the final meeting and shall issue the report within 14 days of the issuance of the preliminary report; provided that if the Committee wishes to further review or consider the sponsor's or requesting legislator's responses to the preliminary assessment report, the final report shall be issued within 21 days of the issuance of the preliminary report. If the Committee recommends against licensure, it may suggest alternative measures for regulation of the occupation or profession.

"§ 120-149.5. *Hearings.*--(a) Before submitting a preliminary or final assessment report, the Committee may, in its discretion, hold one or more public hearings in the Legislative Building or Legislative Office Building.

(b) When assessment reports involving the same or similar occupations or professions are pending before the Committee, the Committee may consider any or all of the matters to be addressed by the reports.

"§ 120-149.6. *Legislative Committee on New Licensing Boards.*--(a) The Legislative Committee on New Licensing Boards is created to consist of a Chairman and eight members, four Senators appointed by the President of the Senate, four members of the House of

Representatives appointed by the Speaker of the House and the Chairman to be appointed as provided herein.

(b) The President of the Senate shall appoint a member of the Senate as Chairman upon the effective date of this Article who shall serve a term beginning with the effective date of this Article and expiring upon the organization of the General Assembly in 1989. Thereafter, the Speaker of the House and the President of the Senate shall alternate the appointment of the Chairman to serve during each biennial session of the General Assembly. The Chairman may vote only in the event of a tie vote. The members of the Committee shall likewise serve biennial terms. If the office of Chairman or any member shall become vacant, the vacancy shall be filled for the unexpired term by the authority making the initial appointment. Five members shall constitute a quorum of the Committee.

(c) The Committee may meet on days when the members of the General Assembly are entitled to subsistence pursuant to G.S. 120-3.1. The Committee is authorized to use the facilities of the State Legislative Building and Legislative Office Building. Clerical and professional staff shall be provided by the Legislative Services Commission."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 13th day of May, 1987.

H.B. 321

CHAPTER 181

AN ACT TO DEFINE THE PHRASE "IN SERVICE" AS IT PERTAINS TO THE SURVIVOR'S ALTERNATE BENEFIT IN THE TEACHERS' AND STATE EMPLOYEES' RETIREMENT SYSTEM AND THE LOCAL GOVERNMENTAL EMPLOYEES' RETIREMENT SYSTEM.

The General Assembly of North Carolina enacts:

Section 1. G.S. 128-27(m) and G.S. 135-5(m) are amended by adding a paragraph to the end of each to read:

"For the purpose of this benefit, a member is considered to be in service at the date of his death if his death occurs within 180 days from the last day of his actual service. The last day of actual service shall be determined as provided in subsection (l) of this section. Upon the death of a member in service, the surviving spouse may make all purchases for creditable service as provided for under this Chapter for which the member had made application in writing prior to the date of death, provided that the date of death occurred prior to or within 60 days after notification of the cost to make the purchase."

Sec. 2. This act shall become effective January 1, 1987.

In the General Assembly read three times and ratified this the 13th day of May, 1987.

H.B. 973

CHAPTER 182

AN ACT TO AMEND THE BUSINESS CORPORATION ACT TO REGULATE THE ACQUISITION OF CONTROL OF CORPORATIONS IN WHICH NORTH CAROLINA HAS A SUBSTANTIAL INTEREST BY REASON OF INCORPORATION OR OTHERWISE.

The General Assembly of North Carolina enacts:

Section 1. Chapter 55 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 7A.

"Control Share Acquisitions.

"§ 55-90. *Short title and definitions.*--(a) The provisions of this Article shall be known and may be cited as The North Carolina Control Share Acquisition Act.

(b) In this Article:

- (1) 'Beneficial ownership' of shares means the sole or shared ownership of any shares or the sole or shared power to vote any shares or to direct the exercise of voting power of any shares, whether such ownership or power is direct or indirect or through any contract, arrangement, understanding, relationship or otherwise, and includes shares beneficially owned by any person acting in concert with such beneficial owner pursuant to any contract, arrangement, understanding, relationship or otherwise. Notwithstanding the foregoing, beneficial ownership does not include shares acquired in the ordinary course of business for the benefit of others in good faith and not for the purpose of circumventing this Article, unless the acquiror of such shares may exercise or direct the exercise of voting of such shares without instruction from others.
- (2) 'Control shares' means shares of an issuing public corporation that when added to all other shares of the corporation beneficially owned by a person would entitle (except for this Article) that person to voting power in the election of directors that is equal to or greater than any of the following levels of voting power:
 - a. One-fifth of all voting power.
 - b. One-third of all voting power.
 - c. A majority of all voting power.

- (3) 'Control share acquisition' means the acquisition by any person of beneficial ownership of control shares, except that the acquisition of beneficial ownership of any shares of an issuing public corporation does not constitute a control share acquisition if the acquisition is consummated in any of the following circumstances:
- a. Before April 30, 1987.
 - b. Pursuant to a contract existing before April 30, 1987, with either:
 - (i) The issuing public corporation; or
 - (ii) A seller of such shares who owned such shares before April 30, 1987.
 - c. Pursuant to the laws of descent and distribution.
 - d. Pursuant to the satisfaction of a pledge or other security interest created in good faith and not for the purpose of circumventing this Article.
 - e. Pursuant to a tender offer, merger or plan of consolidation effected in compliance with applicable law, but only if pursuant to an agreement of merger or consolidation to which the issuing public corporation is a party.
 - f. Pursuant to the sale of such shares by the issuing public corporation or its parent or subsidiary corporation.
For purposes of this definition, shares acquired within any consecutive 90-day period or shares acquired pursuant to a plan to make a control share acquisition are considered to have been acquired in the same acquisition.
- (4) 'Interested shares' means the shares of an issuing public corporation beneficially owned by any of the following persons:
- a. Any person who has acquired or proposes to acquire control shares in a control share acquisition.
 - b. Any officer of the issuing public corporation.
 - c. Any employee of the issuing public corporation who is also a director of the corporation.
- (5) 'Issuing public corporation' means a corporation that:
- a. is incorporated under the laws of:
 - (i) North Carolina and has substantial assets within North Carolina; or
 - (ii) any other state of the United States, and:

- (A) as of the end of each of its two most recent fiscal years and most recent fiscal quarter has more than forty percent (40%) of its fixed assets that are located in the United States located within North Carolina; and
- (B) more than forty percent (40%) of the persons employed by such corporation in the United States are residents of North Carolina;
- b. has 500 or more shareholders,
- c. has its principal place of business or principal office within North Carolina, and
- d. has either:
 - (i) more than ten percent (10%) of its shareholders resident in North Carolina; or
 - (ii) more than ten percent (10%) of its shares owned by North Carolina residents.
- (6) The residence of a shareholder is presumed to be the address appearing in the records of the corporation.
- (7) For purposes of calculating the percentages or numbers described in subsection (b) (5) of this section, any shares held in trust or by a nominee shall be deemed to be held by the beneficiaries of such trust or by the beneficiaries of such shares held by such nominee.

" § 55-91. *Acquiring person statement.*--Any person who has made a control share acquisition or who has made a bona fide written offer to make a control share acquisition may at the person's election deliver an acquiring person statement to the issuing public corporation at the issuing public corporation's principal office. The acquiring person statement must set forth all of the following:

(1) The identity of the acquiring person and each other beneficial owner of shares that are beneficially owned by the acquiring person.

(2) A statement that the acquiring person statement is given pursuant to this Article.

(3) The number of shares of the issuing public corporation beneficially owned by the acquiring person and each other beneficial owner named under subsection (a) of this section.

(4) The level of voting power above which the control share acquisition falls or would, if consummated, fall.

(5) If the control share acquisition has not taken place:

- a. A description in reasonable detail of the terms of the proposed control share acquisition; and

- b. Representations of the acquiring person, together with a statement in reasonable detail of the facts upon which they are based, that the proposed control share acquisition, if consummated, will not be contrary to law, and that the acquiring person has the financial capacity to make the proposed control share acquisition.

" § 55-92. *Meeting of shareholders.*--(a) If the acquiring person so requests at the time of delivery of an acquiring person statement and gives an undertaking to pay the corporation's expenses of a special meeting, within 10 days after delivery of such request the directors of the issuing public corporation shall call a special meeting of shareholders of the issuing public corporation for the purpose of considering the voting rights to be accorded the control shares acquired or to be acquired in the control share acquisition.

(b) Unless the acquiring person agrees in writing to another date, the special meeting of shareholders shall be held within 50 days after the receipt by the issuing public corporation of the request.

(c) If no request is made, the voting rights to be accorded the control shares acquired in the control share acquisition shall be considered at the next special or annual meeting of shareholders.

(d) If the acquiring person so requests in writing at the time of delivery of the acquiring person statement, the special meeting must not be held sooner than 30 days after receipt by the issuing public corporation of the acquiring person statement.

" § 55-93. *Notice.*--If a special meeting is requested pursuant to G.S. 55-92, notice of the special meeting of shareholders shall be given as promptly as reasonably practicable by the issuing public corporation. Notice of any special or annual meeting at which the voting rights of control shares are to be considered shall be given to all shareholders who are entitled to vote at the meeting and who are shareholders of record as of the record date set for the meeting, and to all holders of interested shares, and such notice must include or be accompanied by each of the following:

- (1) A copy of the acquiring person statement delivered to the issuing public corporation pursuant to this Article.

- (2) A statement by the board of directors of the corporation, authorized by a majority of its directors, of its position or recommendation, or that it is taking no position or making no recommendation, with respect to granting voting rights to the control shares acquired or proposed to be acquired in the control share acquisition.

(3) If the shareholders would have a right of redemption under G.S. 55-95, a statement, displayed with reasonable prominence, describing such right and advising the shareholders that it will be available only to those who give the written notice required by G.S. 55-95(b).

"§ 55-94. *Voting rights.*--(a) Control shares acquired in a control share acquisition shall have no voting rights unless such rights are granted by resolution adopted by the shareholders of the issuing public corporation.

(b) To be approved under this section, the resolution must be adopted by the affirmative vote of the holders of at least a majority of all the outstanding shares of the corporation (not including interested shares) entitled to vote for the election of directors; provided that if applicable law or a charter or bylaw provision adopted by the shareholders before the occurrence of the control share acquisition that is the subject of the vote prescribes voting by separate classes of shares, the resolution must also be adopted by the affirmative vote of the holders of at least a majority of each such class (but excluding in any such case all interested shares); and provided further that if applicable law or a charter or bylaw provision adopted by the shareholders before the occurrence of the control share acquisition that is the subject to the vote prescribes voting by shares that would not otherwise be entitled to vote, such shares shall be treated solely for purposes of this section as shares entitled to vote for directors (but excluding in any such case all interested shares).

"§ 55-95. *Right of redemption by shareholders.*--(a) Unless otherwise provided in the charter or a bylaw of the issuing public corporation adopted by the shareholders before a control share acquisition has occurred, if control shares acquired in a control share acquisition are accorded voting rights and the holders of the control shares have a majority of all voting power for the election of directors, all shareholders of the issuing public corporation (other than holders of control shares) have rights as prescribed in this section to have their shares redeemed by the corporation at the fair value of those shares as of the day prior to the date on which the vote was taken under G.S. 55-94.

(b) If the notice of meeting at which voting rights are accorded to control shares contains the statement required by G.S. 55-93(3), a shareholder will not have any right of redemption under this section unless he gives to the corporation, prior to or at the meeting of shareholders at which the voting rights to be accorded to control shares are considered, written notice that if voting rights are accorded to such shares he may ask for the redemption of his shares hereunder.

(c) As soon as practicable after control shares held by persons having a majority of all voting power for the election of directors have been accorded voting rights, the board of directors shall cause a notice to be sent to all shareholders of the corporation advising them of the facts and that if they gave the notice required by subsection (b) of this section they may have rights to have their shares redeemed at the fair value of those shares pursuant to this section.

(d) Within 30 days after the date on which a shareholder receives such notice, such shareholder may make written demand on the corporation for payment of the fair value of his shares, and after such demand, if such shareholder has complied with the notice requirement in subsection (b) of this section, the corporation shall redeem his shares at their fair value within 30 days after the date on which the corporation receives such shareholder's written demand for payment.

(e) As used in this section, 'fair value' means a value not less than the highest price paid per share by the acquiring person in the control share acquisition.

"§ 55-96. *Inconsistent regulation.*--If any jurisdiction under the laws of which a foreign corporation is organized adopts any law containing provisions that are expressly inconsistent with the provisions of this Article as applicable to such foreign corporation, the provisions of this Article shall be inapplicable to such foreign corporation to the extent necessary to resolve such inconsistency.

"§ 55-97. *Severability.*--If any provision or clause of this Article or application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this Article that can be given effect without the invalid provision or application, and to this end the provisions of this Article are declared to be severable.

"§ 55-98. *Effect on existing law.*--Nothing in this Article shall be construed to modify in any manner the provisions or applicability of Article 7 of this Chapter."

Sec. 2. This act is effective upon ratification, but shall expire June 30, 1989.

In the General Assembly read three times and ratified this the 13th day of May, 1987.

H.B. 283

CHAPTER 183

AN ACT AUTHORIZING THE ESTABLISHMENT OF VETERANS CEMETERIES.

Whereas, North Carolina has more than 680,000 veterans of military service; and

Whereas, those veterans are deserving of the opportunity to be buried in a veterans cemetery in recognition of their service to our country; and

Whereas, by 1992, all of the four national cemeteries in North Carolina will be filled, with the Wilmington cemetery being filled and closed at the end of 1986; and

Whereas, the Veterans Administration has now gone to a regional concept for national cemeteries, with the nearest such facility being in the state of Alabama; and

Whereas, veterans are deserving of being buried in close proximity to where their families and friends live and to not have to be transported to Alabama for burial; and

Whereas, the Veterans Administration now has a dollar-for-dollar match program to encourage states to build veterans cemeteries; and

Whereas, 11 states have taken advantage of this program for the benefit of their veterans; and

Whereas, the United States Government owns sufficient land in North Carolina, especially in the 3rd, 7th and 11th United States Congressional Districts, that may be transferred to the State for development as veterans cemeteries; Now, therefore,

The General Assembly of North Carolina enacts:

Section 1. Chapter 65 of the General Statutes is amended by adding a new Article 8A as follows:

"Article 8A.

"Veterans Cemeteries.

" § 65-41. *Land acquisition.*--The State may accept land for the establishment of not more than three veterans cemeteries.

" § 65-42. *Location of cemeteries.*--These veterans cemeteries may be located in those regions of the State with a high concentration of veterans including the 3rd, 7th and 11th United States Congressional Districts."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 14th day of May, 1987.

H.B. 568**CHAPTER 184**

AN ACT TO AUTHORIZE THE COUNTY MANAGER TO REJECT BIDS WHEN APPROPRIATE WITHOUT ACTION BY THE MECKLENBURG COUNTY BOARD OF COMMISSIONERS.

The General Assembly of North Carolina enacts:

Section 1. The seventh paragraph of G.S. 143-129 is amended by adding a new sentence, immediately before the last sentence, to read:

"When a contract must be re-bid, the County Manager may reject all bids based on the original specifications without further action by the board or the governing body."

Sec. 2. This act applies to Mecklenburg County only.

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 14th day of May, 1987.

H.B. 708**CHAPTER 185**

AN ACT TO CHANGE THE NAME OF THE "INDUSTRIAL DEVELOPMENT COMMISSION" FOR STANLY COUNTY TO THE "ECONOMIC DEVELOPMENT COMMISSION" FOR STANLY COUNTY.

The General Assembly of North Carolina enacts:

Section 1. Chapter 141, Session Laws of 1961, as amended by Chapter 706, Session Laws of 1965, Chapter 355, Session Laws of 1975, and Chapter 237, Session Laws of 1983, is amended by deleting "Industrial Development Commission" each time that phrase appears, and substituting "Economic Development Commission".

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 14th day of May, 1987.

H.B. 741**CHAPTER 186**

AN ACT TO REQUIRE THE COUNTY COMMISSIONERS OF CLAY COUNTY TO PROVIDE ADEQUATE FUNDS, PERSONNEL AND EQUIPMENT TO THE SHERIFF OF CLAY COUNTY FOR LAW ENFORCEMENT IN THE COUNTY.

The General Assembly of North Carolina enacts:

Section 1. The county commissioners of a county shall not reduce the budget, salaries or number of authorized positions in the office of the sheriff of that county for the operation of the office of sheriff of that county and the operation of the county jail below the levels provided for in the 1986-87 county budget.

Sec. 2. The budget obligation referred to in Section 1 of this act refers only to general county funds, and, in the event any special funds, grants or other moneys are or become available to the county commissioners of a county for law enforcement purposes or to the sheriff of that county, such special funds, grants or other moneys must be provided to the sheriff in addition to the level of budgetary support required by Section 1 of this act.

Sec. 3. In the 1987-88 budget, and no less often than every four years thereafter, the county commissioners of a county shall provide to the sheriff of that county sufficient money to purchase and operate at least four automobiles for law enforcement purposes, said automobiles to be no more than four years old, and safe and in good repair, and shall pay to the sheriff a minimum of eight hundred dollars (\$800.00) per month, or a minimum of two hundred dollars (\$200.00) per automobile per month, for the maintenance and operation of the automobiles assigned to the sheriff.

Sec. 4. This act applies to Clay County only.

Sec. 5. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 14th day of May, 1987.

H.B. 765

CHAPTER 187

AN ACT TO PERMIT REGULATION OF MARITIME FORESTS
BY KITTY HAWK, KILL DEVIL HILLS, NAGS HEAD AND
SOUTHERN SHORES.

The General Assembly of North Carolina enacts:

Section 1. Maritime forests are a unique natural and topographical feature of Kitty Hawk, Kill Devil Hills, Nags Head, and Southern Shores that are a tourist attraction and protect the towns from the danger of flooding and erosion. Therefore, to promote the health, safety, and general welfare of their residents, these towns may by ordinance define, prohibit, or regulate acts, omissions, or conditions that damage, destroy, or remove any maritime forest or kill, destroy, or remove any vegetation growing in any maritime forest.

Sec. 2. This act applies only to the Towns of Kitty Hawk, Kill Devil Hills, Nags Head, and Southern Shores.

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 14th day of May, 1987.

S.B. 138

CHAPTER 188

AN ACT TO AUTHORIZE MOORE COUNTY TO LEVY A ROOM OCCUPANCY TAX.

The General Assembly of North Carolina enacts:

Section 1. Levy of Tax. (a) The Board of Commissioners of Moore County may by resolution levy a room occupancy and tourism development tax.

(b) Collection of the tax and liability therefor, shall begin and continue only on and after the first day of a calendar month set by the board of county commissioners in the resolution levying the tax, which in no case may be earlier than the first day of the succeeding calendar month after the date of adoption of the resolution.

Sec. 2. Occupancy Tax. The county room occupancy and tourism development tax that may be levied under this Part shall be three percent (3%) of the gross receipts derived from the rental of any room, lodging, or similar accommodation furnished by any hotel, motel, inn, tourist camp or other similar place within the county now subject to the three percent (3%) sales tax imposed by the State under G.S. 105-164(3). This tax is in addition to any local sales tax. This tax does not apply to gross receipts derived by the following entities from accommodations furnished by them:

- (1) Religious organizations;
- (2) Educational organizations;
- (3) Any business that offers to rent fewer than five units; and
- (4) Summer camps.

Sec. 3. Administration of Tax. (a) Any tax levied under this act is due and payable to the county in monthly installments on or before the 15th day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the 15th day of each month, prepare and render a return on a form prescribed by the county. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied.

(b) Any person, firm, corporation, or association who fails or refuses to file the return required by this act shall pay a penalty of ten dollars (\$10.00) for each day's omission.

(c) In case of failure or refusal to file the return or pay the tax for a period of 30 days after the time required for filing the return or for paying the tax, there shall be an additional tax, as a penalty, of five percent (5%) of the tax due in addition to the penalty prescribed in subsection (b), with an additional tax of five percent (5%) for each additional month or fraction thereof until the occupancy tax is paid.

(d) Any person who willfully attempts in any manner to evade the occupancy tax imposed under this act or who willfully fails to pay the tax or make and file a return shall, in addition to all other penalties provided by law, be guilty of a misdemeanor and shall be punished by a fine not to exceed one thousand dollars (\$1,000), imprisonment not to exceed six months, or both.

Sec. 4. Collection of Tax. Every operator of a business subject to a tax levied under this act shall, on and after the effective date of the levy of the tax, collect the three percent (3%) room occupancy tax. This tax shall be collected as part of the charge for the furnishing of any taxable accommodation. The tax shall be stated and charged separately from the sales records, and shall be paid by the purchaser to the operator of the business as trustee for and on account of Moore County. The room occupancy tax levied pursuant to this act shall be added to the sales price and shall be passed on to the purchaser instead of being borne by the operator of the business. The county shall design, print, and furnish to all appropriate businesses in Moore County the necessary forms for filing returns and instructions to ensure the full collection of the tax.

An operator of a business who collects the occupancy tax levied under this act may deduct from the amount remitted to the county a discount of three percent (3%) of the amount collected.

Sec. 5. Disposition of Taxes Collected. (a) Moore County shall remit the net proceeds of the occupancy tax to the county Tourism Development Authority in Moore County. "Net proceeds" means gross proceeds less the cost to the county of administering and collecting the tax, which may not exceed three percent (3%) of the collected tax.

(b) The Tourism Development Authority may expend any funds distributed to it pursuant to subsection (a) only to further the development of travel, tourism, and conventions in the county through State, national, and international advertising and promotion. The Authority may not use more than twenty-five percent (25%) of the funds distributed to it pursuant to subsection (a) for administrative expenses of the Authority.

Sec. 6. Appointment, Duties of Tourism Development Authority. (a) When the board of county commissioners adopts a resolution levying a room occupancy tax pursuant to this Part, it shall also adopt a resolution creating a county Tourism Development Authority, which shall be a public authority under the Local Government Budget and Fiscal Control Act and shall be composed of the following nine members:

(1) A county commissioner appointed by the board of county commissioners.

(2) Five owners or operators of hotels, motels, or other taxable tourist accommodations, two of which own or operate the largest hotels, motels, or other accommodations in the county by rental unit count and three of which own or operate other hotels, motels, or other accommodations in the county, all of whom shall be appointed by the board of county commissioners;

(3) The Executive Vice President of the Sandhills Area Chamber of Commerce; and

(4) Two individuals interested in the tourist business who have demonstrated an interest in tourist development, but do not own or operate a hotel, motel, or other taxable tourist accommodation, who shall be appointed by the board of county commissioners.

All members of the Authority shall serve without compensation.

Vacancies in the Authority shall be filled in the same manner as the initial appointments. Members appointed to fill vacancies shall serve for the remainder of the unexpired term for which they are appointed to fill. Members shall serve terms as provided in the rules of procedures and by-laws of the Authority.

The members shall elect a chairman. The Authority shall meet at the call of the chairman and shall adopt rules of procedure and by-laws to govern its meetings and activities. The finance officer for Moore County shall be the ex officio finance officer of the Authority.

(b) The Tourism Development Authority may contract with any person, firm, or agency to advise and assist it in the promotion of travel, tourism, and conventions.

(c) The Tourism Development Authority shall report quarterly and at the close of the fiscal year to the board of county commissioners on its receipts and expenditures for the preceding quarter and for the year in such detail as the board may require.

Sec. 7. Repeal of Levy. (a) The board of county commissioners may by resolution repeal the levy of the room occupancy tax in Moore County, but no repeal of taxes levied under this Part shall be effective until the end of the fiscal year in which the repeal resolution was adopted.

(b) No liability for any tax levied under this Part that attached prior to the date on which a levy is repealed shall be discharged as a result of the repeal, and no right to a refund of a tax that accrued prior to the effective date on which a levy is repealed shall be denied as a result of the repeal.

Sec. 8. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 14th day of May, 1987.

S.B. 231

CHAPTER 189

AN ACT TO REQUIRE THE SECRETARY OF HUMAN RESOURCES TO INSPECT RESTAURANTS AT LEAST QUARTERLY.

The General Assembly of North Carolina enacts:

Section 1. G.S. 130A-249 is amended by inserting the following after the first sentence: "The Secretary shall inspect each restaurant at least quarterly."

Sec. 2. This act shall become effective July 1, 1987.

In the General Assembly read three times and ratified this the 14th day of May, 1987.

S.B. 17

CHAPTER 190

AN ACT TO ELIMINATE SEASONAL PRIVILEGE LICENSES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-33 is amended by deleting subsection (k) of that section.

Sec. 2. This act shall become effective June 1, 1987.

In the General Assembly read three times and ratified this the 15th day of May, 1987.

S.B. 415

CHAPTER 191

AN ACT RELATING TO LEASING AND RENTING OF THE CHARLOTTE AUDITORIUM-COLISEUM-CONVENTION CENTER-BASEBALL STADIUM AUTHORITY PROPERTIES AND FACILITIES.

The General Assembly of North Carolina enacts:

Section 1. Section 5.21 of the Charter of the City of Charlotte, being Chapter 713, Session Laws of 1965, as amended by Chapter 92, Session Laws of 1971, Chapter 140, Session Laws of 1977, and Chapter 956, Session Laws of 1983, is further amended by deleting "Auditorium, Coliseum and Convention Center purposes", and substituting "Auditorium, Coliseum, Convention Center and Baseball Stadium purposes".

Sec. 2. Section 5.22 of the Charter of the City of Charlotte, being Chapter 713, Session Laws of 1965, as amended by Chapter 92, Session Laws of 1971, Chapter 309, Session Laws of 1973, and Chapter 956, Session Laws of 1983, is further amended by deleting "auditorium-coliseum-convention center" and substituting "auditorium-coliseum-convention center-baseball stadium".

Sec. 3. Section 5.23 of the Charter of the City of Charlotte, being Chapter 713, Session Laws of 1965, as amended by Chapter 92, Session Laws of 1971, and Chapter 956, Session Laws of 1983, is further amended:

(1) in the first, second, and fifth sentences by deleting "auditorium-coliseum-convention center" and substituting "auditorium-coliseum-convention center-baseball stadium";

(2) in the fifth sentence by adding immediately after the first semicolon the words: "shall have full and complete control over granting and denying use of, and establishing and collecting rents and fees for the use of, the properties and facilities";

(3) in the fifth sentence by deleting the words: "may establish and collect rents and fees for the use of the properties and facilities"; and

(4) by adding the following new language at the end of the section: "The Authority may, in its discretion, lease or rent auditorium-coliseum-convention center-baseball stadium properties and facilities for such terms and upon such conditions as the Authority may determine, but not for longer than 10 years. Leases and rentals for terms of more than one year may be executed only after 10 days' public notice by publication describing the property to be leased or rented, stating the annual lease or rental payments, and announcing the Authority's intent to authorize the lease or rental at its next meeting. No public notice or resolution of the Authority is required with respect to leases and rentals for terms of one year or less."

Sec. 4. All laws and clauses of laws in conflict with this act are repealed.

Sec. 5. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 15th day of May, 1987.

S.B. 519

CHAPTER 192

AN ACT RELATING TO THE APPOINTMENT OF MEMBERS OF
THE LEXINGTON CITY BOARD OF EDUCATION.

The General Assembly of North Carolina enacts:

Section 1. Section 2 of Chapter 26 of the Private Laws of 1935, as amended by Chapter 700 of the Session Laws of 1943 and by Chapter 56 of the Session Laws of 1949 and by Chapter 342 of the Session Laws of 1957 and by Chapter 892 of the Session Laws of 1973, is further rewritten to read:

"Sec. 2. The Lexington City Board of Education shall be composed of nine members. Eight of the members shall be appointed by the City Council of the City of Lexington. The City Council shall appoint one member to the Board of Education from each of the six wards of the City of Lexington and two members from the territory of the Lexington City School Administrative Unit at large, each of whom shall serve for the term appointed or until their successors are appointed and qualified. One of the members of the Board of Education must reside within the jurisdictional area of the Lexington City School Administrative Unit and must reside outside of the corporate limits of the City of Lexington as same may exist from time to time. The member residing outside of the corporate limits of the City of Lexington and within the limits of the Lexington City School Administrative Unit shall be appointed by the Board of County Commissioners of Davidson County. If a Board of County Commissioners shall fail to make this appointment within 60 days after receiving a resolution from the City Council requesting that it be made, the City Council may then make this appointment. All members of the Board of Education shall be appointed for three-year terms. The terms of the present members of Lexington City Board of Education which have not expired will continue for the duration of said terms except where there are two members who, because of changes in the boundaries of the wards of the City of Lexington reside in the same ward, and in such case, the Lexington City Council shall determine which members shall serve the balance of the term from said ward. The appointments of new member of the Lexington City Board of Education subsequent to the effective date shall be made for initial terms of such length that the terms of three of the members shall expire each year and the Lexington City Council shall specify terms for each new appointee. Following the initial terms, all appointees shall serve for three-year terms. No member of the Board of Education may serve for more than two consecutive full terms without an intervening period of three years. All vacancies occurring

on said Board shall be filled for the unexpired term by the City Council if the vacancy be one for a member residing within the corporate limits of the City of Lexington, and if the member be residing outside the corporate limits of the City of Lexington, then the vacancy shall be appointed by the Board of County Commissioners of Davidson County provided for hereinabove."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 15th day of May, 1987.

H.B. 75

CHAPTER 193

AN ACT PROVIDING FOR ELECTION OF THE PITT COUNTY BOARD OF EDUCATION.

The General Assembly of North Carolina enacts:

Section 1. Beginning December 7, 1987, the Pitt County Board of Education shall consist of 12 members, with two each elected from six districts in nonpartisan plurality elections. Only voters residing in a district may vote for the members from that district.

Sec. 2. The initial election for all 12 members shall be on November 3, 1987, and shall be conducted according to the same schedule as municipal nonpartisan plurality elections held at that time. Members elected in November 1987 shall take office on December 7, 1987, and shall serve for the terms specified in Section 3.

Sec. 3. At the initial election in November 1987, two members of the Board shall be elected from each of the six districts described in Section 5. One seat on the Board from each district shall be designated as seat A and the other as seat B. Each candidate shall file and run for a particular seat, and each seat shall be voted upon separately. The person elected initially to seat A in each district shall serve for a term to expire in 1992. The person elected initially to seat B in each district shall serve for a term to expire in 1990. The terms of the members elected in 1987 shall expire in 1990 and 1992 at the times set by general State law for commencement of the terms of county board of education members elected in those years. Successors to the members elected in 1987 shall be elected as provided in section 4.

Sec. 4. After the initial election, elections shall be held in 1990 and subsequent even-numbered years thereafter as terms expire, at the time set by general State law for the election of county boards of education. Members elected in 1990 and subsequent years shall take office at the time set by general State law and shall serve for terms of six years.

Sec. 5. The six districts are as follows:

District One. The portion of the City of Greenville included within the following boundaries, running clockwise from the northwest corner of the district: 5th Street from the intersection with Memorial Drive east to Contentnea Avenue, Contentnea north to the Tar River, the Tar River east to Summit Street, Summit south to 1st Street, 1st west to Reade Street, Reade south to 4th Street, 4th east to Summit, Summit south to 5th Street, 5th east to the eastern edge of the East Carolina University campus (between Meade and Maple streets), south along the eastern edge of the campus to 14th Street, 14th west to the western edge of the campus (between College Hill Drive and East Rock Spring Road), north along that western edge of the campus to 10th Street, 10th west to Evans Street, Evans south to Green Mill Run, Green Mill Run southwest to the Seaboard Coastline Railroad tracks, the tracks south to Highway 264 Bypass, 264 Bypass west to Hooker Road, Hooker north to Green Mill Run, Green Mill Run west to Memorial Drive, Memorial Drive north to 5th Street.

District Two. All of Belvoir, Bethel and Carolina townships; the portion of Greenville Township outside the City of Greenville, north and east of the Tar River and west of Pactolus Township (census enumeration districts 263A, 264 and 265); all of the City of Greenville north of the Tar River; and that part of the City of Greenville bordered on the north by the Tar River, on the south by 5th Street, on the east by Contentnea Avenue, and on the west by the city limits (blocks 201-247 of Block Group 2 in census district 9902 and blocks 201-212 in Block Group 2 in census district 9905).

District Three. All of Grimesland and Pactolus townships; the portion of Greenville Township east of the City of Greenville and south of Pactolus Township (census enumeration district 262); and the part of the City of Greenville south of the Tar River and north of the following boundary, running from west to east: Summit Street from the Tar River south to 1st Street, 1st west to Reade Street, Reade south to 4th Street, 4th east to Summit, Summit south to 5th Street, 5th east to the eastern edge of the East Carolina University campus (between Meade and Maple streets), south along the eastern edge of the campus to 14th Street, 14th east to Ragsdale Road, Ragsdale north to Wright Road, Wright north to 10th Street, 10th east to River Bluff Road.

District Four. All of Falkland, Fountain, Farmville and Arthur townships; the portion of Greenville Township south of the Tar River and west of the City of Greenville (census enumeration district 266A); and the part of the City of Greenville west of Memorial Drive and

south of 5th Street.

District Five. All of Winterville Township except the portion in District Six, and the parts of the City of Greenville not in any other district.

District Six. All of Ayden, Grifton, Swift Creek and Chicod townships and the portion of Winterville Township north of Highway 43 (census enumeration districts 277T and 277U).

Sec. 6. Vacancies on the Board shall be filled by appointment by the remaining members of the Board. The person appointed shall serve until the next regularly scheduled election for county boards of education, at which time a person shall be elected to fill the remainder of the unexpired term or, if the term is due to expire that year, a new term. The person appointed to fill a vacancy must reside in the same district as the departing member.

Sec. 7. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 15th day of May, 1987.

H.B. 282

CHAPTER 194

AN ACT TO REVISE AND CONSOLIDATE THE CHARTER OF
THE TOWN OF LAKE LURE.

The General Assembly of North Carolina enacts:

Section 1. The Charter of the Town of Lake Lure is hereby revised and consolidated to read as follows:

"THE CHARTER OF THE TOWN OF LAKE LURE

"ARTICLE I. INCORPORATION, POWERS AND BOUNDARIES

"Section 1.1. *Incorporation.* The inhabitants of the Town of Lake Lure, in Rutherford County, are a body corporate and politic, under the name 'Town of Lake Lure.' Under that name, they have all the powers, duties, rights, privileges and immunities conferred and imposed on the Town by this Charter or on cities by the general law. The term 'general law' is employed herein as defined in G. S. 160A-1.

"Section 1.2. *Town Boundaries.* The boundaries of the Town are those existing at the time of ratification of this Charter, as set forth on the official map entitled 'Boundary Map of the Town of Lake Lure, N. C.,' maintained as required by G.S. 160A-22. Immediately upon modification of the boundaries in accordance with law, the appropriate changes to the official map shall be made, copies shall be filed in the offices of the Secretary of State, the Rutherford County Register of

Deeds and the appropriate board of elections, as required by general law.

"ARTICLE II. GOVERNING BODY

"Section 2.1. *Structure; Number of Members.* The governing body of the Town is the Board of Commissioners, which has four (4) members, and the Mayor.

"Section 2.2. *Manner of Electing Board.* The qualified voters of the entire Town elect the members of the Board.

"Section 2.3 *Term of Office of Board Members.* Members of the Board are elected to four-year staggered terms. The Board members serving on the date of ratification of this Charter shall serve until the expiration of their terms. In the municipal election in 1987 and every four years thereafter, two members of the Board shall be elected. In the municipal election in 1989 and every four years thereafter, two members of the Board shall be elected.

"Section 2.4. *Election of Mayor; Term of Office.* The qualified voters of the entire Town elect the Mayor. The Mayor is elected for a term of two years. The Mayor shall have the right to vote on matters before the Board only when there are equal numbers of votes in the affirmative and in the negative.

"ARTICLE III. ELECTIONS

"Section 3.1. *Nonpartisan Plurality Method.* Town officers are elected on a nonpartisan basis, and the results determined by a plurality, as provided in G.S. 163-292.

"ARTICLE IV. ADMINISTRATION

"Section 4.1. *Form of Government.* The Town operates under the council-manager form of government, as provided in Chapter 160A of the General Statutes, Article 7, Part 2.

"Section 4.2. *Town Manager.* The Board appoints a Town Manager who is responsible for the administration of all departments of the Town government. The Town Manager has all the powers and duties conferred by general law, except as expressly limited by the provisions of this Charter.

"Section 4.3. *Town Clerk.* The Board appoints a Town Clerk to perform the duties required by law and as the Board may direct.

"Section 4.4. *Tax Collector.* The Board appoints a Tax Collector to perform the duties required by law and as the Board may direct.

"Section 4.5. *Town Attorney.* The Board appoints a Town Attorney licensed to practice law in North Carolina. The Town Attorney represents the Town, advises Town officials and performs other duties required by law and as the Board may direct.

"Section 4.6. *Finance Officer.* The Board appoints a Finance Officer to perform the duties provided by law and other appropriate duties.

"Section 4.7. *Other Officers and Employees.* The Board may authorize other offices and positions to be filled by appointment of the Town Manager, and may organize the Town government and combine offices as deemed appropriate, subject to the requirements of general law.

"ARTICLE V. ADDITIONAL PROVISIONS

"Section 5.1. *Termination of Utility Service; Charges Become Liens.*

(a) Notwithstanding the provisions of G.S. 160A-314, or any other provisions of law, in case any charges for water service or sewerage service due and owing to the Town of Lake Lure are not paid, then such charges and any penalties assessed for nonpayment shall become a lien upon the property served or in connection with which service is used, upon compliance with the procedure set out in this section; provided, however, no such charges shall become a lien unless the same were incurred by the owner of the particular property.

(b) Upon nonpayment, the Town shall give the customer a fair opportunity to avoid termination of utility service and application of the charges and penalties as a lien against the property, by paying charges due or showing that the charges are in error. As soon as possible following the specified past due date, written notice of delinquency shall be sent to the customer by first-class mail.

(c) The notice required by subsection (b) shall contain the following information:

- (1) The amount which must be paid to avoid termination;
- (2) The date on which termination will occur, which must be at least 10 days after the mailing date;
- (3) A statement that the customer may appear at Town Hall between the hours of 9:00 a.m. and 4:00 p.m. on any business day and request an informal hearing with the Town Manager or designee, for the purpose of showing error or working out a satisfactory extended payment arrangement; and
- (4) A statement that failure by the customer to appear and show error, make payment or work out a satisfactory extended payment arrangement shall result in the charges and penalties being applied as a lien against the real property, which may be enforced by sale of the real property as provided by law.

(d) The employee responsible for mailing the notice as provided in subsections (b) and (c) shall certify the date on which the notice was mailed, on a form or in a record book or electronic medium designed

for that purpose.

(e) If the customer does not make acceptable payment arrangements and fails to show cause why service should not be terminated and the charges and penalties applied as a lien against the property, service may be terminated on or after the date specified in the notice of termination, and the charges and penalties may be applied as a lien against the property. Service may be terminated between the hours of 8:30 a.m. and 4:00 p.m. on business days from Monday through Thursday only. If the customer fails to comply with the agreed upon extended payment arrangements, service may be terminated without further notice and the charges and penalties may be applied as a lien.

(f) Unpaid charges and penalties may at any time be collected by civil action in the name of the Town. In addition, the charges and penalties may be collected by the Town Tax Collector by sale of the property to which the lien attaches, as provided in G.S. 105-375, and the lien shall be treated as a property tax lien for the purposes of that statute. The lien shall attach on the date on which the certificate of charges due is docketed as provided in G.S. 105-375(d), and shall continue until the principal amount of the charges plus penalties, interest and costs allowed by law have been fully paid.

"Sec. 5.2. *Town Alcoholic Beverage Control Stores.* Town alcoholic beverage control stores shall operate as provided in Chapter 353, Session Laws of 1979, as amended.

"Sec. 5.3. *Rehabilitation and Maintenance of Lake Lure.* (a) The Town shall have the power to operate the electric power generating plant at Lake Lure and sell all the power produced thereby to a single utility, to lease the plant to any private person, firm or corporation under such terms and conditions and for such period or periods as the Board of Commissioners shall deem to be in the best interests of the Town.

(b) The rehabilitation and maintenance by the Town of the lake, trunk sewerage line, dam and electric power generating plant and ancillary facilities and the issuance of revenue bonds therefore are hereby declared to be proper public and municipal purposes.

"Sec. 5.4. *Sewage Assessments.* In addition to any authority granted by general or local law to the Town to finance sewage disposal facilities and sewage treatment facilities, the Board is hereby authorized to levy assessments upon all properties which are now or will hereafter be connected to any sewage disposal or treatment facilities owned or constructed by the Town, for the purpose of financing, in whole or in part, the construction and operation of

sewage disposal or treatment facilities. Such assessments shall apply uniformly within reasonable classifications to all properties now or hereafter connected to any disposal or treatment facilities owned or constructed by the Town; provided, however, the Board may establish higher assessments for property developed or to be developed for commercial, industrial, or institutional uses or purposes than those established for private residential use, and may base the assessments for residential property or hotel or motel property upon the number of dwelling units served or to be served by such disposal or treatment facility.

"Sec. 5.5. *Special Assessments.* (a) Streets.

- (1) In addition to the authority granted by general law, the Board is authorized to order street improvements and to assess the costs thereof against abutting property in accordance with the provisions of this section.
- (2) The Board may order street improvements and assess the total costs thereof against abutting property, exclusive of the costs incurred at street intersections, according to one or more of the assessment bases set forth in Article 10 of Chapter 160A of the General Statutes without the necessity of a petition, upon the following findings of fact:
 - (i) That the street improvement project does not exceed 1,200 linear feet; and
 - (ii) That such street or part thereof is unsafe for vehicular traffic and it is in the public interest to make such improvements; or
 - (iii) That it is in the public interest to connect two streets or portions of a street already improved; or
 - (iv) That it is in the public interest to widen a street, or part thereof, which is already improved; provided that assessments for widening any street or portion of a street without a petition shall be limited to the cost of widening and otherwise improving such street in accordance with the street classification and improvement standards established by the Town's thoroughfare or major street plan, as applied to the particular street or part thereof.
- (3) For the purposes of this Article, the term 'street improvement' includes grading, regrading, surfacing, resurfacing, widening, paving, repaving, acquisition of right-of-way and construction or reconstruction of curbs, gutters and street drainage facilities.

(b) Sidewalks. In addition to the authority granted by general law, the Board is authorized, without the necessity of petition, to order sidewalk improvements or repairs according to standards and specifications of the Town, and to assess the total costs thereof against abutting property, according to one or more of the assessment bases set forth in Article 10 of Chapter 160A of the General Statutes; provided that regardless of the assessment basis or bases employed, the Board may order the costs of sidewalk improvements made only on one side of a street to be assessed against property abutting both sides of such street.

(c) Procedure. In ordering street and sidewalk improvements without a petition and assessing the cost thereof under authority of this section, the Board shall comply with the procedures required by Article 10 of Chapter 160A of the General Statutes, except those provisions relating to petitions of property owners and sufficiency thereof. The effect of the act of levying assessments under authority of this section shall be the same as if assessments were levied under authority of Article 10 of Chapter 160A of the General Statutes."

Sec. 2. The purpose of this act is to revise the Charter of the Town of Lake Lure and to consolidate certain acts concerning the property, affairs and government of the Town. It is intended to continue without interruption those provisions of prior acts which are expressly consolidated into this act, so that all rights and liabilities which have accrued are preserved and may be enforced.

Sec. 3. This act does not repeal or affect any acts concerning the public schools, or acts validating official actions, proceedings, contracts or obligations of any kind.

Sec. 4. All acts in conflict with this act are repealed. The following acts, having served the purposes for which they were enacted or having been consolidated into this act, are expressly repealed:

Chapter 179, Private Laws of 1927
Chapter 71, Private Laws of 1929
Chapter 205, Private Laws of 1935
Chapter 228, Public-Local Laws of 1937
Chapter 254, Public-Local Laws of 1937
Chapter 738, Session Laws of 1943
Chapter 739, Session Laws of 1943
Chapter 1057, Session Laws of 1953
Chapter 437, Session Laws of 1963
Chapter 101, Session Laws of 1975
Chapter 351, Session Laws of 1979
Chapter 105, Session Laws of 1985

Sec. 5. Chapter 353, Session Laws of 1979 is amended to change each reference to "Chapter 18A" to "Chapter 18B", and to change each reference to a particular section of the former Chapter 18A of the General Statutes to refer to the provisions of the current Chapter 18B of the General Statutes which most closely correspond.

Sec. 6. This act does not affect any rights or interests which arose under any provisions repealed by this act.

Sec. 7. All existing ordinances, resolutions, and other provisions of the Town of Lake Lure not inconsistent with the provisions of this act shall continue in effect until repealed or amended.

Sec. 8. No action or proceeding pending on the effective date of this act by or against the Town or any of its departments or agencies shall be abated or otherwise affected by this act.

Sec. 9. If any provision or application of this act is held invalid, such invalidity shall not affect other provisions or applications of this act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

Sec. 10. Whenever a reference is made in this act to a particular provision of the General Statutes, and such provision is later amended, superseded or codified, the reference shall be deemed amended to refer to the amended General Statute or the General Statute which most closely corresponds to the statutory provision which is superseded or recodified.

Sec. 11. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 15th day of May, 1987.

H.B. 470

CHAPTER 195**AN ACT TO CLARIFY THAT ADMINISTRATIVE COSTS OF COLLECTING THE OCCUPANCY TAX IN CERTAIN COUNTIES SHALL BE PAID FROM THE PROCEEDS OF THE TAX.**

The General Assembly of North Carolina enacts:

Section 1. Subsection 1(e) of Chapter 969 of the 1985 Session Laws (Regular Session 1986) reads as rewritten:

"(e) Use of Tax Revenue. Except as provided in Section 2 of this act for Durham County, a taxing county shall place ~~revenue collected from~~ the net proceeds of a tax levied under this act in a special Travel and Tourism Fund. Revenue in this Fund may be used only to promote travel and tourism in the county. As used in this subsection,

"net proceeds" means gross proceeds less the cost to the county of administering and collecting the tax, as determined by the finance officer."

Sec. 2. This act applies only to the following counties: Clay, Graham, Jackson, and Macon.

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 15th day of May, 1987.

H.B. 606

CHAPTER 196

AN ACT TO PROVIDE THAT THE HYDE COUNTY BOARD OF COMMISSIONERS MUST APPOINT TO FILL A VACANCY ON THE MEMBERSHIP OF THAT BOARD, OR IN THE OFFICES OF SHERIFF OR REGISTER OF DEEDS, THE PERSON RECOMMENDED BY THE POLITICAL PARTY EXECUTIVE COMMITTEE OF THE VACATING OFFICER.

The General Assembly of North Carolina enacts:

Section 1. G.S. 153A-27.1(h) reads as rewritten:

"(h) This section shall apply only in the following counties: Alamance, Alleghany, Avery, Beaufort, Brunswick, Buncombe, Burke, Cabarrus, Caldwell, Cherokee, Clay, Cleveland, Davidson, Davie, Graham, Guilford, Haywood, Henderson, Hyde, Jackson, Madison, McDowell, Mecklenburg, Moore, Polk, Randolph, Rockingham, Rutherford, Stanly, Stokes, Transylvania, Wake, and Yancey."

Sec. 2. G.S. 161-5(a1) is amended by inserting immediately after "Henderson", the word "Hyde".

Sec. 3. G.S. 162-5.1 is amended by inserting immediately after "Henderson", the word "Hyde".

Sec. 4. This act is effective upon ratification and applies to pending vacancies.

In the General Assembly read three times and ratified this the 15th day of May, 1987.

H.B. 701

CHAPTER 197

AN ACT TO PROVIDE NONPROFIT ORGANIZATIONS WITH THE ALTERNATIVE OF PROVIDING A LETTER OF CREDIT AS SECURITY FOR PAYMENTS TO THE EMPLOYMENT SECURITY FUND.

The General Assembly of North Carolina enacts:

Section 1. G.S. 96-9 is amended by adding a new subsection at the end to read:

"(h)

- (1) Any nonprofit organization which has been paying contributions on a reimbursement basis for at least three consecutive calendar years during none of which years the benefit charges exceeded four tenths of one percent (.4%) of its taxable payroll may, before November 1 of the fourth or subsequent calendar year, elect to pay contributions by special reimbursement on the basis provided for in subdivision (2) below but only upon the following conditions:
 - a. Benefit charges in the year of election are less than four tenths of one percent (.4%) of taxable payroll.
 - b. The election shall apply to no less than the four calendar years following the year of election unless terminated by the Commission under subdivision (3) below.
 - c. All reimbursements during the year of election and the three preceding years were paid when due.
 - d. The election of special reimbursement shall not entitle the electing nonprofit organization to any refund of any portion of its account balance.
 - e. No later than January 1 of the first year to which its election applies, the electing nonprofit organization shall furnish the Commission a letter of credit in an amount equal to one hundred fifty percent (150%) of the account balance required under subdivision (2) below.
 - f. The Commission shall by regulation prescribe the form of the letter of credit and the criteria for the financial institution issuing such letter of credit along with the form of election under this section.
- (2) Any qualified nonprofit organization that meets the conditions of subdivision (1) above shall, upon the approval of its election by the Commission, pay contributions by special reimbursement as follows:
 - a. The organization's account shall have a required minimum balance that shall be computed on August 1 of each calendar year for the following calendar year and shall be equal to the greater of:
 1. one-half the largest amount of claims charged to it during any of the three calendar years preceding the computation date; or,
 2. one-tenth of one percent (0.1%) of the highest total taxable payroll during any of the three calendar years preceding the computation date.

- b. On the first day of each quarter of any calendar year, the Commission shall bill the employer for an amount necessary to bring its account to the required minimum balance, and the amount so billed is due no later than 25 days after the bill is mailed.

(3) If any electing organization shall fail to make any quarterly payment when due:

- a. The Commission may draw the full amount of the letter of credit for application to the employer's account;
- b. The organization's required minimum balance shall immediately and without notice become the greater of:
 - 1. a sum equal to its current minimum balance plus the full amount of the current letter of credit; or
 - 2. a sum equal to five tenths of one percent (.5%) of its total taxable payroll. Any amount necessary, after the application of any funds drawn from the letter of credit, to bring the employer's account to such balance shall be payable upon demand.
- c. If, after demand, the organization shall fail to pay any sums required under paragraph b. above, the Commission may revoke the organization's election for special reimbursement and any difference between the employer's account balance and one percent (1%) of its total taxable payroll shall become immediately due and payable.
- d. The Commission may, in addition, exercise any of the powers granted to it in G.S. 96-10 to collect any amount due.
- e. Pursuant to such regulations as the Commission may adopt, the Commission shall afford any organization affected by this paragraph a hearing to determine if any increase in the organization's minimum required balance should be reduced, in whole or in part, or if any revocation of a special reimbursement election should be rescinded. If the Commission, in its sole discretion, is satisfied that the conditions giving rise to the increase or revocation have been corrected, it may reduce such increase or rescind such revocation provided that it may require as a condition of such reduction or rescission a new letter of credit up to three times the amount normally required.
- f. When used in the subsection, 'total taxable payroll' means the highest total taxable payroll during the three most recent, completed calendar years."

Sec. 2. This act shall become effective January 1, 1988.

In the General Assembly read three times and ratified this the 15th day of May, 1987.

H.B. 769

CHAPTER 198

AN ACT ENABLING THE CITY OF ELIZABETH CITY AND THE COUNTY OF PASQUOTANK TO ESTABLISH AN AIRPORT AUTHORITY FOR THE CONSTRUCTION, OPERATION, USE AND MAINTENANCE OF AIRPORT FACILITIES IN THE COUNTY OF PASQUOTANK.

The General Assembly of North Carolina enacts:

Section 1. There is hereby created the Elizabeth City-Pasquotank County Airport Authority (for convenience hereinafter referred to as the "Airport Authority"), which shall be a body corporate and politic, having the powers and jurisdiction and charged with the duties hereinafter enumerated and such other and additional powers and duties as shall be conferred upon it by Chapter 63 of the General Statutes and future acts of the General Assembly.

Sec. 2. (a) The Airport Authority shall consist of a Chairperson and four members, all of whom shall be resident voters of the County of Pasquotank.

(b) Two members shall be appointed by the City Council of Elizabeth City and two members shall be appointed by the Board of Commissioners of Pasquotank County. Same shall be appointed in June of each year. At the first such election by the City Council and the County of Pasquotank in 1987, one of the two members so appointed by each governing body shall be chosen for a term of one year and the other member for a term of two years. Thereafter each governing body shall appoint one member in June of each year to serve for a term of two years. Vacancies among the appointed members of the Airport Authority shall be filled by the governing body who so appointed the prior person to the office then vacant and said appointee to the vacant seat shall serve the unexpired term.

(c) The Chairperson of the Airport Authority shall be appointed on a rotating basis by the City Council of Elizabeth City and the County of Pasquotank to serve a two-year term. In June of 1987 and in June every four years thereafter, the City Council of Elizabeth City shall select and appoint the Chairperson and in June of 1989, and in June every four years thereafter, the Board of Commissioners shall select and appoint the Chairperson. A vacancy in the Chairperson's seat shall be filled by the governing body who so appointed the prior Chairperson and said appointee to the vacant Chairperson's seat shall serve the unexpired term. The Chairperson shall be a nonvoting

member of the Airport Authority except in the case of a tie vote in which case the Chairperson may vote and break the tie.

(d) The Chairperson and each of the members of the Airport Authority and their successors shall take and subscribe before the Clerk of the Superior Court of Pasquotank County an oath of office and file the same with the City Council of Elizabeth City and County Commissioners of Pasquotank County. The Chairperson and members of the Airport Authority shall serve without compensation as such, but shall be compensated for expenses actually incurred in connection with the performance of their duties.

Sec. 3. The Captain of the U. S. Coast Guard Support Center located at the U. S. Coast Guard Base in Pasquotank County, the City Manager of Elizabeth City and the County Manager of Pasquotank County shall be ex officio, nonvoting members of the Airport Authority.

Sec. 4. The Airport Authority shall have the following powers and authority and is charged with the following duties:

(1) It shall have exclusive jurisdiction, control, supervision and management over airports owned by the City of Elizabeth City and Pasquotank County. It shall have the power to let or lease any airport under its control or any portion of the same, including buildings and hangars thereon and to grant concessions in connection with the operation of the airport upon such terms and conditions as it shall deem proper. It shall have authority to charge and collect fees and rents for use of property or services furnished. It shall have the power to employ necessary personnel, including a director or manager and to fix the salaries and prescribe the duties thereof.

(2) It may acquire, establish, construct, own, control, lease, equip, improve, maintain, operate, and regulate airports or landing fields for the use of airplanes and other aircraft within Pasquotank County and may use for such purpose or purposes any property suitable therefor that is now or may at any time hereafter be owned or controlled by Elizabeth City or Pasquotank County.

(3) It shall make plans and projections with respect to acquisition, construction, operation, regulation, improving or maintaining airports of the Authority and their related facilities and in that connection secure necessary technical assistance and engineering.

(4) It shall be entitled to sue or be sued in its name as to matters to which it has authority and power as stated herein.

(5) It shall have authority to deal with the Federal Aviation Agency and any other federal or State agency respecting the airports, their facilities, operation and maintenance.

(6) It shall organize, and adopt and from time to time amend rules of operation and procedure.

Sec. 5. The Airport Authority, in connection with the operation of an airport or airports, shall prepare an annual budget including all costs and expenditures for operations for a fiscal year beginning on the first day of July and showing all anticipated revenues to be derived from the operation of the airport or airports during such fiscal year, and submit the same to the City Council of Elizabeth City and the Board of Commissioners of Pasquotank County at the time and in the form directed by said governing bodies. Said budget shall be approved by each governing body. The cost of the operation and maintenance of any airport under the jurisdiction of the Airport Authority shall be defrayed from the revenues derived from the operation thereof, except to the extent that the City Council of the City of Elizabeth City and the Board of County Commissioners of Pasquotank County may equally appropriate available revenues of the City and County for that purpose. The Airport Authority shall have no authority to incur any deficit without prior express approval of the City Council of Elizabeth City and the Board of County Commissioners of Pasquotank County. Any authorized deficit in the cost of operating the Airport Authority and the facilities over which it has charge shall be paid equally by the City of Elizabeth City and the County of Pasquotank and any profit therefrom shall be paid equally to the City of Elizabeth City and County of Pasquotank. The affairs of the Authority shall be audited each year and the Airport Authority shall report annually to the City Council of Elizabeth City and the County of Pasquotank County on its activities, revenues and expenditures of the past year. The Airport Authority and its members shall have no authority to pledge the credit of the City of Elizabeth City or Pasquotank County.

Sec. 6. All rights and powers given to the counties or municipalities by the statutes of North Carolina, which may now be in effect or be enacted in the future relating to the development, regulation and control of municipal airports and the regulations of aircraft, are hereby vested in the said Airport Authority.

Sec. 7. If any section, subsection, paragraph or clause herein contained is for any reason held unconstitutional, invalid, or inoperative, the same in no manner shall affect the remaining provisions hereof and it is hereby declared to be the intent of the General Assembly to enact the remaining provisions hereof.

Sec. 8. All laws and clauses of laws in conflict with the provisions of this act are hereby repealed.

Sec. 9. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 15th day of May, 1987.

H.B. 829

CHAPTER 199

AN ACT TO UPDATE THE STATEMENTS OF THE POWERS
AND DUTIES OF THE DEPARTMENT OF CULTURAL
RESOURCES, DIVISION OF STATE LIBRARY.

The General Assembly of North Carolina enacts:

Section 1. G.S. 125-2(4) is rewritten as follows:

"(4) To purchase and maintain collections of books, periodicals, newspapers, maps, films, audiovisual and other materials; to subscribe to computerized databases; to provide other resources, services and programs; and to serve as an information distribution center for State government and the people of the State as a means for the promotion of knowledge, education, commerce and business in the State. The scope of the library's collections, resources and services should be determined by the Secretary of Cultural Resources upon consideration of the recommendations of the State Library Commission; and in making these decisions, the Secretary shall take into account the collections, resources and services of other libraries throughout the State and the availability of such collections, resources and services to the general public. All materials owned by the State Library shall be available for free circulation to libraries and to all citizens of the State under rules and regulations fixed by the librarian, except that the librarian may restrict the circulation of books and other materials which, because they are rare or are used intensively in the library for reference purposes or for other good reasons, should be retained in the library at all times. The public schools shall be given equal priority in borrowing all films which are available for circulation."

Sec. 2. G.S. 125-2(5) is amended by changing the comma after the phrase "and collections" to a period and deleting the remaining text of the subdivision.

Sec. 3. G.S. 125-2 is amended by adding a new subdivision to read:

"(5a) To provide for the establishment and maintenance of union catalogs."

Sec. 4. G.S. 125-2(7) is repealed.

Sec. 5. G.S. 125-2(9) is rewritten as follows:

"(9) To provide library services to blind and physically handicapped readers of North Carolina by making available to them books and other reading materials in braille, or sound recordings or any other

medium used by the blind and physically handicapped; to enter into contracts and agreements with appropriate libraries and other organizations for the purposes of serving the blind and physically handicapped; to enter into contracts with library agencies of other states for providing library service to the blind and physically handicapped of those states, provided adequate compensation is paid for such service and such contract is otherwise advantageous to this State."

Sec. 6. G.S. 125-2(10) is amended by deleting the period at the end of the sentence and adding a new phrase to read:

"; and to assist nonprofit corporations in organization and operation for the purposes of cooperative programs."

Sec. 7. This act shall become effective July 1, 1987.

In the General Assembly read three times and ratified this the 15th day of May, 1987.

H.B. 1357

CHAPTER 200**AN ACT TO AUTHORIZE USE OF UDAG FUNDS AND SMALL CITIES COMMUNITY DEVELOPMENT BLOCK GRANT FUNDS BY THE TOWN OF ST. PAULS.**

The General Assembly of North Carolina enacts:

Section 1. Notwithstanding G.S. 160A-360 (a) and any other limiting statutes, the Town of St. Pauls may use Urban Development Action Grant Funds and Small Cities Community Development Block Grant Funds for financing of a turkey processing plant, financing related utilities and other related expenses, to be located within Robeson County.

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 15th day of May, 1987.

S.B. 408

CHAPTER 201**AN ACT TO ANNEX CERTAIN PROPERTY INTO THE CITY OF CHARLOTTE AND TO RATIFY CERTAIN ACTIONS OF THE CITY OF CHARLOTTE.**

Whereas, the City of Charlotte proposes to annex an area known as the Mineral Springs-University Research Park Area; and

Whereas, the owners of certain property in said Area, who are challenging the annexation, have reached an agreement with the City of Charlotte settling this dispute: and

Whereas, said settlement agreement by its terms requires ratification by the General Assembly; and

Whereas, municipal annexation agreements between the City of Charlotte and the Towns of Cornelius, Davidson, Huntersville, Matthews, Mint Hill, Pineville and Weddington provide that the areas described in Section 4 of this act should be annexed by the City of Charlotte; and

Whereas, said municipal annexation agreements enhance planning by such municipalities as well as by affected residents and property owners in Mecklenburg County; and

Whereas, it is the policy of this State to encourage and foster said municipal annexation agreements; Now, therefore,

The General Assembly of North Carolina enacts:

Section 1. Action is hereby fully ratified of the City of Charlotte in approving and executing the agreement with the University Research Park, Inc., and others as set forth in the minutes of the April 6, 1987, meeting of the City Council of Charlotte. Said agreement is fully effective and binding on all parties, their heirs, successors and assigns and shall continue in full force and effect until fully and finally implemented.

Sec. 2. As of June 30, 1994, the corporate limits of the City of Charlotte shall be extended to include therein the following described area:

Beginning at a point on the Charlotte City Limit line as established in Ordinance 1964-X of the City of Charlotte (as amended), the northeasterly corner of the lot described in Deed Book 2260, page 381, also the northwesterly corner of the lot described in Deed Book 4086, page 602, said point having a North Carolina Grid coordinate of approximately, X 1,469,648 Y 570,870, and being in or near a branch, said branch being a tributary to Doby Creek; thence, in a northeasterly direction with the proposed Charlotte City limit line meandering with the centerline of said branch a distance of approximately 375 feet to a point, said point being in the centerline of a Railroad Spur Track, thence with the proposed Charlotte City limit line along the centerline of said Railroad Spur Track N. 54-00-00 W. approximately 650 feet to a point; thence along the centerline of said Railroad Spur Track N. 54-00-00 W. 445.44 feet to a point; thence along a circular curve to the left having a radius of 955.37 feet, a chord bearing of N. 84-17-15 W. and a chord distance of 963.66 feet, an arc length of 1,010.05 feet to a point; thence S. 65-25-30 W.

1,008.71 feet to a point; thence along a circular curve to the left having a radius of 1,432.69 feet, a chord bearing of S. 45-59-45 W. and a chord distance of 953.14 feet, an arc length of 971.66 feet to a point; thence S. 26-34-00 W. 705.04 feet to a point; thence along a curve to the right having a radius of 1,910.08 feet, a chord bearing of S. 28-23-18 W. and a chord distance of 121.41 feet, an arc length of 121.41 feet to a point in the centerline of said Railroad Spur Track; thence N. 33-31-45 W. 749.75 feet to a point, said point being the southeasterly corner of that tract described in that deed to Walter & Edgar Stevenson in Deed Book 1110, Page 455; thence along the easterly and northerly lines of Walter & Edgar Stevenson in two (2) courses: N. 33-31-45 W. 763.00 feet to a point; and N. 60-21-54 W. 706.33 feet to a point in the easterly right of way line of Mallard Creek Road, said point being on the northeasterly line of that tract described in that deed to Walter & Edgar Stevenson in Deed Book 1110 at Page 455; thence along the said right of way line of Mallard Creek Road N. 36-14-03 E. 757.65 feet to a point, said point being on the westerly line of that tract of land described in that deed to Madeline H. Garrison in deed book 1026 at page 383; thence along the westerly line of Madeline H. Garrison S. 33-00-43 E. 165.92 feet to a point; thence S. 16-10-43 E. 829.63 feet to a point in or near the centerline of a creek, said point being the southwesterly corner of Madeline H. Garrison; thence along the centerline of said creek in an easterly direction along the southerly lines of Madeline H. Garrison aforementioned above, Beatrice Penninger as described in Deed Book 2080 at Page 10, Harold L. Frazier as described in deed book 3697 at page 583 and Charles W. Wilson as described in Deed Book 3609 at Page 773 the following 48 courses: (1) N. 69-28-20 E. 80.22 feet to a point; (2) S. 30-15-23 E. 13.89 feet to a point; (3) N. 85-36-05 E. 65.19 feet to a point; (4) N. 25-01-01 E. 16.55 feet to a point; (5) N. 88-10-54 E. 63.03 feet to a point; (6) S. 88-43-37 E. 45.01 feet to a point; (7) N. 36-45-13-E. 98.60 feet to a point; (8) N. 83-20-44 E. 60.41 feet to a point; (9) N. 48-25-00 E. 94.92 feet to a point; (10) N. 19-43-20 E. 112.61 feet to a point; (11) S. 88-55-09 E. 53.01 feet to a point; (12) N. 11-32-05 E 100.02 feet to a point; (13) N. 34-49-28 E 84.05 feet to a point; (14) N. 54-07-49 E. 80.21 feet to a point; (15) N. 33-41-24 E. 57.69 feet to a point; (16) S. 38-39-35 E. 32.02 feet to a point; (17) N. 67-37-12 E. 55.15 feet to a point; (18) N. 88-27-07 E. 74.03 feet to a point; (19) S. 67-50-01 E. 29.15 feet to a point; (20) N. 39-28-21 E. 66.07 feet to a point; (21) N. 85-50-25 E. 55.15 feet to a point; (22) N. 23-57-45 E. 29.55 feet to a point; (23) S. 57-48-15 E. 31.91 feet to a point; (24) N. 79-55-10 E. 91.41 feet to a point; (25) S. 72-04-19 E. 35.74 feet to a point; (26) S. 11-46-06 E. 24.52 feet to a point; (27) S. 82-52-30 E. 96.75 feet to a point;

(28) S. 15-22-35 E. 41.48 feet to a point; (29) S. 63-00-15 E. 59.48 feet to a point; (30) N. 42-09-57 E. 71.51 feet to a point; (31) S. 79-30-31 E. 27.46 feet to a point; (32) S. 20-51-16 E. 22.47 feet to a point; (33) N. 41-29-47 E. 34.71 feet to a point; (34) S. 85-01-49 E. 23.09 feet to a point; (35) S. 14-30-01 E. 59.91 feet to a point; (36) S. 34-02-45 E. 44.65 feet to a point; (37) N. 52-07-30 E. 34.21 feet to a point; (38) N. 87-16-25 E. 63.07 feet to a point; (39) S. 42-36-51 E. 33.97 feet to a point; (40) S. 15-46-51 W. 47.80 feet to a point; (41) S. 71-48-21 E. 150.53 feet to a point; (42) N. 46-50-51 E. 21.93 feet to a point; (43) S. 75-57-50 E. 24.74 feet to a point; (44) N. 54-02-22 E. 63.01 feet to a point; (45) S. 77-33-38 E. 69.63 feet to a point; (46) S. 17-06-10 E. 40.80 feet to a point; (47) N. 83-33-30 E. 62.39 feet to a point; (48) N. 54-28-16 E. 55.62 feet to a point in or near the centerline of said creek, said point being the southeasterly corner of Charles W. Wilson aforementioned above; thence along the easterly line of Charles W. Wilson N. 1-31-30 W. 886.54 feet to a point; thence N. 83-43-08 E. 644.35 feet to a point, said point being the southeasterly corner of that tract described in deeds to Charles E. Tyler in Deed Book 3057 at Page 114 and Deed Book 3746 at Page 540; thence along the east line of Charles E. Tyler N. 28-27-10 W. 713.76 feet to a point, said point being the southeasterly corner of Richard W. Caskey as described in Deed Book 4341 at Page 064; thence along the easterly line of Richard W. Caskey N. 1-27-50 W. 430.05 feet to a point on the easterly right of way line of Mallard Creek Road; thence along the said easterly right of way line of Mallard Creek Road N. 66-24-15 E. 274.31 feet to a point; thence along a circular curve to the left having a radius of 1,568.38 feet, a chord bearing of N. 57-18-10 E. and a chord distance of 496.18 feet, an arc distance of 498.26 feet to a point; thence N. 48-12-05 E. 207.79 feet to a point, said point being on the westerly line of that tract described in that deed to Elizabeth Mason in Deed Book 1295 at Page 594; thence along the westerly line of Elizabeth Mason S. 6-47-57 W. 600.44 feet to a point; thence S. 8-52-30 E. 279.77 feet to a point; thence S. 19-07-41 E. 544.37 feet to a point, said point being the southwesterly corner of Elizabeth Mason; thence along the southerly lines of Elizabeth Mason aforementioned above, Newkirk Street, and Richard A. Houser, Jr., as described in Deed Book 4317 at Page 137, S. 84-14-11 E. 637.64 feet to a point, said point being the southeasterly corner of Richard A. Houser, Jr.; thence along the southerly lines of Charles W. Robinson as described in Deed Book 2166 at Page 355 and Deed Book 2437 at Page 175, S. 84-13-08 E. 266.79 feet to a point, said point being the southeasterly corner of Charles W. Robinson; thence S. 7-08-32 W. 1062.41 feet

to a point; said point being on a line 200 feet from and parallel with the centerline of the aforementioned Railroad Spur Track; thence with the proposed Charlotte City limit line along said parallel line S. 54-00-00 E. approximately 720 feet to a point, said point being in or near the centerline a branch, said branch being described above as a tributary of Doby Creek; thence, in a northeasterly direction with the proposed Charlotte City limit line meandering with the centerline of said branch a distance of approximately 5375 feet to a point, said point being located 110 feet south of and normal to the centerline of W. T. Harris Boulevard West; thence, in a westerly direction with the proposed Charlotte City limit line following along a line 110 feet south of and parallel with the centerline of W. T. Harris Boulevard West approximately 1,200 feet to a point, said point being located where a line 110 feet south of and parallel with the center line of W. T. Harris Boulevard West intersects with the westerly lot line of Lot as described in Deed Book 4383, page 920 (if extended); thence, in a northerly direction with the proposed Charlotte City limit line crossing W. T. Harris Boulevard West and following along the westerly lot line of Lot as described in said Deed Book 4383, page 920 as having a bearing and distance of N 19-22-22 E, approximately 860 feet to a point; thence, in a southeasterly direction with the proposed Charlotte City limit line following along the northerly line of Lot as described in said Deed Book 4383, page 920, S 70-37-43 E, 630 feet to a point in the westerly line of Lot as described in Deed Book 4389, page 5; thence, in a northeasterly direction with the proposed Charlotte City limit line following along a portion of the westerly lot line of Lot as described in said Deed Book 4389, page 5, as having a bearing and distance as follows: N 19-22-22 E, 199.4 feet to a point; thence, N 38-33-25 E, 817.57 feet to a point, said point being the southwest corner of Lot as described in Deed Book 4770, page 677; thence, continuing in a northeasterly direction with the proposed Charlotte City limit line following along the westerly lot line of Lot as described in said Deed Book 4770, page 677 as having a bearing and distance of N 36-11-55 E, 719.20 feet to a point, said point being the southwest corner of tract C as described in Deed Book 4880, page 252; thence, continuing in a northeasterly direction with the proposed Charlotte City limit line following along the westerly lot line of tract C as described in said Deed Book 4880, page 252 as having a bearing and distance of N 36-11-55 E approximately 410 feet to a point, said point being the centerline of Research Drive; thence, leaving Research Drive and continuing in a northeasterly direction with the proposed Charlotte City limit line following along the easterly lot line of the lot described

in Deed Book 3421, page 396 N 36-11-55 E, 992.91 feet to a point, said point being in the Mallard Creek Channel, also being in the southerly line of Lot 8 as shown on recorded Map Book 20, page 510; thence, in a southeasterly direction with the proposed Charlotte City limit line following along the southerly lot lines of Lot 8 and Lot 7 as shown on recorded Map Book 20, page 510, said lines also being the Mallard Creek Channel for nineteen (19) courses as follows: (1) S 88-21-40 E, 250.00 feet to a point; thence, (2) S 83-13 E, 63.29 feet to a point; thence, (3) S 61-40-15 E, 53.00 feet to a point; thence, (4) S 68-19 E, 104.51 feet to a point; thence, (5) S 56-32-40 E, 133.22 feet to a point; thence, (6) S 31-55-20 E, 119.26 feet to a point; thence, (7) S 49-55 E, 119.34 feet to a point; thence, (8) S 30-35-20 E, 114.30 feet to a point; thence, (9) S 26-30-10 E, 450 feet to a point; thence, (10) S 51-55-15 E, 75.00 feet to a point; thence (11) N 72-14-45 E, 25.86 feet to a point on the western right-of-way line of David Taylor Drive; thence, (12) N 72-14-45 E, 63.07 feet to a point on the eastern right-of-way line of David Taylor Drive; thence, (13) N 72-14-45 E, 21.07 feet to a point; thence, (14) N 84-44-45 E, 235.00 feet to a point; thence, (15) S 66-15-15 E, 100.00 feet to a point; thence, (16) S 24-40-15 E, 550.00 feet to a point; thence (17) S 35-40-15 E, 100.00 feet to a point; thence, (18) S 63-40-15 E, 100.00 feet to a point; thence, (19) S 75-56-50 E, 75.33 feet to a point where the Mallard Creek Channel intersects the westerly margin of the Controlled Access Line of Interstate Highway 85 said point being located 171 feet left and normal to Station 173+05² Line "L" Interstate 85 as shown on a map recorded in the North Carolina State Highway Plans File Book 1, page 186 at the Mecklenburg County Public Registrar; thence, in a southeasterly direction with the proposed Charlotte City limit line following a line perpendicular to and crossing Line "L" Interstate 85 at Station 173+05.2, 342 feet to a point on the easterly margin of the Controlled Access Line of Interstate 85, said point being located 171 feet right of and normal to Station 173+05² Line "L" as shown on said map recorded in said Book 1, page 186; thence, with the proposed Charlotte City limit line following along the easterly Controlled Access Line, of Interstate Highway 85 as shown on said map recorded in said Book 1, page 186, for seven (7) courses as follows (1) running in a southwesterly direction approximately 155.50 feet to a point, 171 feet right of and normal to Station 171+50 Line "L", (2) running in a southeasterly direction 39 feet to a point, 210 feet right of and normal to Station 171+50 Line "L" (3) running in a southwesterly direction approximately 300 feet to a point, 210 feet right of and normal to Station 168+50 Line "L" (4) running to a northwesterly direction 39

feet to a point, 171 feet right of and normal to Station 168+50 Line "L" (5) running in a southwesterly direction approximately 750 feet to a point, 171 feet right of and normal to Station 161+00 Line "L" (6) running in a southeasterly direction 18 feet to a point, 189 feet right of and normal to Station 161+00 Line "L" (7) running in a southwesterly direction approximately 604 feet to a point on the easterly margin of the Controlled Access Line of Interstate Highway 85, said point being located 155 feet right of and normal to Station 154+81.6 North Bound Lane Line as shown on a map recorded in the North Carolina State Highway Plans File Book 1, page 147A at the Mecklenburg County Public Registrar; thence, with the proposed Charlotte City limit line following along the easterly Controlled Access Line of Interstate Highway 85 as shown on said map recorded in said Book 1, page 147A for five (5) courses as follows (1) running in a southwesterly direction approximately 606 feet to a point, 120 feet left of and normal to Station 5+90.50 Ramp "D" line (2) running in a southerly direction approximately 194 feet to a point, 105 feet left of and normal to Station 7+90.50 Ramp "D" line (3) running in a southerly direction approximately 217 feet to a point, 105 feet left of and normal to Station 10+13.39 Ramp "D" line (4) running in a southerly direction approximately 220 feet to a point, 110 feet left of and normal to Station 12+13.39 Ramp "D" line (5) running in a southerly direction approximately 217 feet to a point on the northerly margin of the Controlled Access Line of W. T. Harris Boulevard, said point being located 100 feet left of and normal to Station 223+56.66 Line "L" W. T. Harris Boulevard; thence, in a southwesterly direction with the proposed Charlotte City limit line following a line normal to and crossing Line "L" W. T. Harris Boulevard at Station 223+56.66, 200 feet to a point on the southerly margin of the Controlled Access Line of W. T. Harris Boulevard, said point being located 100 feet right of and normal to Station 223+56.66 Line "L" W. T. Harris Boulevard and also on the easterly margin of the Controlled Access Line of Interstate Highway 85; thence, with the proposed Charlotte City limit line following along the easterly Controlled Access Line of Interstate Highway 85 as shown on said map recorded in said Book 1, page 147A for seven (7) courses as follows: (1) running in a southwesterly direction approximately 160 feet to a point, 105 feet right and normal to Station 11+50 "Ramp C" line (2) running in a southwesterly direction approximately 444 feet to a point 105 feet right of and normal to Station 7+05.63 "Ramp C" line (3) running in a southwesterly direction approximately 194 feet to a point, 115 feet right of and normal to Station 5+05.63 "Ramp C" line (4) running in a southwesterly direction approximately 132 feet to

a point, 152 feet right of and normal to Station 129+50+ North Bound Lane line (5) running in a southerly direction approximately 250 to a point, 152 feet right of and normal to Station 127+00 North Bound Lane line (6) running to a northwesterly direction approximately 15 feet to a point, 137 feet right of and normal to Station 127+00 North Bound Lane line (7) running in a southwesterly direction approximately 91.50 feet to a point on the easterly margin of the Controlled Access Line of Interstate Highway 85, said point being located 171 feet right of and normal to Station 126+08.55 Line "L" as shown on a map recorded in the North Carolina State Highway Plans File Book 1, page 185; thence, with the proposed Charlotte City limit line following along the easterly Controlled Access Line of Interstate Highway 85 as shown on maps recorded in said Book 1, pages 185, 184, and 183 for six (6) courses as follows (1) running in a southwesterly direction 171 feet right of and normal to Line "L" approximately 5465 feet to a point, 171 feet right of and normal to Station 72+00 Line "L" (2) running in a southeasterly direction 25 feet to a point, 196 feet right of and normal to Station 72+00 Line "L" (3) running in a southwesterly direction 300 feet to a point, 196 feet right of and normal to Station 69+00 Line "L" (4) running in a northwesterly direction 25 feet to a point 171 feet right of and normal to Station 69+00 Line "L" (5) running in a southwesterly direction approximately 688 feet to a point on the easterly margin of Interstate Highway 85, said point being 171 feet right of and normal to Station 62+12 Line "L" (6) running in a northwesterly direction following a line perpendicular to and crossing Line "L" Interstate Highway 85 at Station 62+12, 342 feet to a point of the westerly margin of Interstate Highway 85 being 171 feet left of and normal to Station 62+12 Line "L" also being the northeasterly corner of the lot described in Deed Book 4147, page 378 (first tract); thence, in a general northwesterly direction with the proposed Charlotte City limit line following along the northerly lot lines of the lot described in said Deed Book 4147, page 378 (first tract) for seven (7) courses as follows: (1) N 20-55-34 E, 262.71 feet to a point (2) N 11-04-26 W, 280.50 feet to a point (3) N 21-37-57 W, 809.08 feet to a point (4) N 60-23-09 W, 476.42 feet to a point (5) N 33-10-49 W, 230.34 feet to a point (6) S 34-59-13 W, 198.00 feet to a point (7) N 63-27-37 W, 1,462.73 feet to a point in the centerline of Neal Road (State Road 2498) the northwesterly corner of the lot described in said Deed Book 4147, page 378 (first tract) said point being on the Charlotte City Limit Line as established in Ordinance 1964-X of the City of Charlotte (as amended); thence, in a southwesterly direction with said Charlotte City limit line following along a westerly lot line of the lot described in said Deed Book 4147, page 378 (first tract) S 18-

49-03 W, 4.43 feet with the centerline of Neal Road (State Road 2498) to a point in the centerline of said Road also the southeasterly corner of the lot described in Deed Book 4086, page 600; thence, in a northwesterly direction with said Charlotte City limit line following along the southerly lot lines of the lot described in said Deed Book 4086, page 600 for five (5) courses as follows: (1) N 49-27-51 W, 576.13 feet to a point (2) N 18-13-56 W, 573.24 feet to a point (3) N 42-52-23 W, 180.95 feet to a point (4) N 0-34-33 W, 354.09 feet to a point (5) N 21-13-07 W, 153.31 feet to a point, said point being the westerly most corner of the lot described in said Deed Book 4086, page 600; thence, in a northerly direction with said Charlotte City limit line following along the westerly lot lines of the lot described in said Deed Book 4086, page 600 for four (4) courses as follows: (1) N 33-21-07 E, 200.66 feet to a point (2) N 56-33-07 E, 90.12 feet to a point (3) N 10-07-50 W, 108.48 feet to a point (4) N 39-06-14 E, 173.37 feet to a point, said point being the southwest corner of the lot described in Deed Book 4086, page 602; thence, in a northerly direction with said Charlotte City limit line following along the westerly lot lines of the lot as described in said Deed Book 4086, page 602 for four (4) courses as follows: (1) N 39-06-14 E, 113.70 feet to a point (2) N 9-48-37 E, 264.05 feet to a point (3) N 21-23-37 E, 274.83 feet to a point (4) N 27-00-30 E, 113.28 feet to the point and place of beginning.

Sec. 3. From and after June 30, 1994, the area described in Section 2 of this act and its citizens and property shall be subject to all debts, laws, ordinances and regulations in force in the City of Charlotte and shall be entitled to the same privileges and benefits as other parts of the City of Charlotte. Real and personal property in said area shall be subject to such property taxes of the City of Charlotte as may be applicable and enforceable as to such property at any given time under G.S. 160A-58.10 as said statute may be amended. No portion of the area described in Section 2 of this act may be annexed by the City of Charlotte prior to June 30, 1994.

Sec. 4. The following described areas in Mecklenburg County are subject to annexation by the City of Charlotte only, and no portion thereof is subject to annexation by any other municipality:

Area I

Beginning at a point located where the southerly right-of-way margin of Albermarle Road (North Carolina Highway 27) intersects with a line 40 feet east of and parallel with the centerline of Wilgrove - Mint Hill Road (State Road 1004), said point being an intersection of the present Charlotte City limit and the Mint Hill Town Sphere of

Influence Limit; thence, leaving the present Charlotte City Limit and running in an easterly direction following a line along the southerly right-of-way margin of Albermarle Road (North Carolina Highway 27), said line being the Charlotte City and Mint Hill Town Sphere of Influence Limits, crossing Pine Grove Road, Norfolk Southern Railroad, Blair Road (North Carolina Highway 51), Cabarrus Road (State Road 3102), Arlington Church Road (State Road 3110), and Cobel Road (State Road 3100) approximately 23,868 feet to a point where the southerly margin of Albemarle Road (North Carolina Highway 27) intersects with the Mecklenburg County-Cabarrus County line, said point being a common corner of the Charlotte City and Mint Hill Town Sphere of Influence Limits; thence, leaving the Mint Hill Town Sphere of Influence Limit and running in a northwesterly direction with the Mecklenburg County-Cabarrus County line crossing Rocky River Church Road (State Road 2810), Peach Orchard Road (State Road 2809) at three (3) points, John Bostar Lane (State Road 2951), Harrisburg Road (State Road 2805), Saddle View Court (State Road 4517), Gateway Lane (State Road 4516), Reedy Creek, and Plaza Road Extension (State Road 2830), to a point, said point being a common corner of Mecklenburg County and Cabarrus County; thence, running in a northwesterly direction and continuing with the Mecklenburg County-Cabarrus County line crossing Plaza Road Extension (State Road 2830), at four (4) points, Rocky River Road (State Road 2802), Caldwell Road (State Road 2804), Southern Railroad, University City Boulevard (North Carolina Highway 49) to a point, said point being a common corner of Mecklenburg County and Cabarrus County; thence, running in a northwesterly direction and continuing with the Mecklenburg County-Cabarrus County line crossing United States Highway 29, and Union School Road (State Road 2467) to a point, said point being a common corner of Mecklenburg County and Cabarrus County; thence, running in a northwesterly direction and continuing with the Mecklenburg County-Cabarrus County line crossing Quay Road (State Road 2465) Interstate Highway 85, Quay Road (State Road 2465), and Odell School Road (State Road 2464), to a point, said point being a common corner of Mecklenburg County and Cabarrus County; thence, running in a northwesterly direction and continuing with the Mecklenburg-Cabarrus line crossing Beard Road (State Road 2463), Christenbury Road to a point, said point being a common corner of Mecklenburg County and Cabarrus County; thence, running in a northwesterly direction and continuing with the Mecklenburg-Cabarrus line to a point; thence, continuing in a northwesterly direction with the Mecklenburg County-Cabarrus County line crossing Eastfield Road (State Road 2459) to a point where said county line intersects with the northerly right-of-way margin of Eastfield Road (State Road 2459), a

common corner of the Charlotte City Sphere of Influence Limit and the towns of Cornelius, Huntersville, and Davidson Sphere of Influence Limit; thence, with said Sphere of Influence Limit, running in a westerly direction following along the said northerly right-of-way margin of Eastfield Road (State Road 2459) approximately 21,195 feet crossing an unnamed street, (State Road 2460), Edward Street, Asbury Chapel Road (State Road 2442), Dogwood Lane (State Road 2616), and the Southern Railroad to a point in the northerly right-of-way margin of Alexanderana Road (State Road 2457); thence, continuing in a westerly direction following along the northerly right-of-way margin of Alexanderana Road (State Road 2457) approximately 13,563 feet, crossing Everett Keith Road (State Road 2458), Old Statesville Road (North Carolina Highway 115), Statesville Road (United States Highway 21), Interstate Highway 77, Mount Holly-Huntersville Road (State Road 2004) to a point in the northerly right-of-way margin of Mount Holly-Huntersville Road (State Road 2004); thence, continuing in a westerly direction following along the northerly right-of-way margin of Mount Holly-Huntersville Road (State Road 2004) approximately 14,861 feet, crossing Kerns Road (State Road 2119), Wedgewood Drive (State Road 2226), Westminster Drive (State Road 2198), Shields Drive (State Road 2199), Beatties Ford Road (State Road 2074) to a point in the easterly boundary line of the property as described in Deed Book 3545, page 276; thence, with the easterly boundary line of the property as described in said Deed Book 3545, page 276 as having a bearing of N 35-28-02 W, a distance of approximately 272.93 feet to a point; thence, with the northerly boundary line of the property as described in said Deed Book 3545, page 276, (tract II) and the northerly boundary lines of the properties as described in Deed Book 3664, page 883, Deed Book 2009, page 202, Deed Book 1215, page 481, as having a bearing and distance as follows: N 71-12-30 W, 58.97 feet, N 71-19-W, 332.80 feet, N 71-19 W, 455.08 feet, N 71-19- W, 1070.60 feet, S 32-45-10 E, 284.78 feet, N 62 W, approximately 450 feet to a point, said point being the northeasterly corner of Lot Number 1 in Block G as shown on recorded Map Book 8, page 323; thence, with the northerly boundary line of Lot Number 1 in Block G, the northerly boundary line of Lot Number 1 in Block F, and the northerly boundary line of Lot Number 1 in Block E as shown on said recorded Map Book 8, page 323 as having a bearing of N 60-14 W, a total distance of 918.45 feet to a point in or near the center line of Gar Creek, said point being the southeast corner of the property as described in Deed Book 4056, page 126; thence, with the southerly boundary line of the property as described in said Deed Book 4056, page 126 in seven (7) courses as follows: (1) N 63-45 W, 1947.60 feet to a point in the right-of-way of Sample Road (State Road 2125), (2) N 63-15 E, 544.7

feet to a point in the right-of-way of Sample road. (3) N 36-40 W, 1679.5 feet to a point, (4) N 71-29 E, 181.2 feet to a point, (5) N 71-50 W, 83.0 feet to a point, (6) S 80-44 W, 140.0 feet to a point, (7) N 36-40 W, 58.0 feet to a point, said point being the southwest corner of the property as described in said Deed Book 4056, page 126; thence, with a new line N 61-24 W, 2,680.0 feet to a point in the Mecklenburg - Gaston County line, said new line being a connecting line between the southeast corner of the property described in Deed Book 4056, page 126 and a point in the Mecklenburg - Gaston County line located in the Catawba River Channel, said point being a common corner of the Charlotte City Sphere of Influence Limit and the towns of Cornelius, Huntersville, and Davidson Sphere of Influence Limit; thence, running in a general southerly direction with the Mecklenburg County and the Gaston County line, said line being the Catawba River Channel, crossing Rozzelles Ferry Road (North Carolina Highway 16), Mount Holly Road (North Carolina Highway 27), Seabound Systems Railroad, Interstate Highway 85, Wilkinson Boulevard (United States Highway 74 and 29), and the Southern Railway to a point, said point being the common corner of Mecklenburg County, North Carolina, Gaston County, North Carolina, and York County, South Carolina, also being the Catawba River Channel; thence, continuing in a general southerly direction, with the Mecklenburg County, North Carolina and the York County, South Carolina line, said line being the Catawba River Channel, crossing York Road (North Carolina Highway 49) to a point, a common corner of Mecklenburg County, North Carolina and York County, South Carolina; thence, leaving the Catawba River Channel in a northeasterly direction with the Mecklenburg County, North Carolina and York County, South Carolina line crossing McKee Road (State Road 1100), Torrence Branch Road (State Road 1494), Zoar Road (State Road 1105), Steele Creek Road (North Carolina Highway 160), Hamilton Road (State Road 1106), Choate Road (State Road 1124), and Carowinds Boulevard (State Road 1441) to a point, a common corner of Mecklenburg County, North Carolina and York County, South Carolina; thence, in a southeasterly direction crossing Interstate Highway 77 with the Mecklenburg County, North Carolina and the York County, South Carolina line to a point on the westerly right-of-way margin of Nations Ford Road (State Road 1126), a common corner of the City of Charlotte, North Carolina Sphere of Influence and the Town of Pineville, North Carolina Sphere of Influence; thence, in a northerly direction with the westerly right-of-way margin of Nations Ford Road (State Road 1126) approximately 9.435 feet to a point in the centerline of the Southern Railroad; thence, in a southeasterly direction with the centerline of the Southern Railroad

approximately 5213 feet crossing the centerline of Nations Ford Road to a point in the centerline of Sugar Creek; thence, in a southeasterly direction continuing with the centerline of the Southern Railroad approximately 3,100 feet crossing Industrial Drive to a point 40 feet south of and normal to the centerline of Industrial Drive, on the present Pineville Town Limit line; thence, leaving the centerline of the Southern Railroad and running in a northeasterly direction, following along a line 40 feet south of and parallel with the centerline of Industrial Drive with the present Pineville Town Limit line to a point, said point being 40 feet south of an normal to the centerline of Industrial Drive and 40 feet west of and normal to the centerline of Old Pineville Road and being a common corner of the present Charlotte City Limit line and the present Pineville Town Limit line; thence, leaving the present Pineville Town Limit line and running with the various courses and distances of the present Charlotte City Limit line beginning in a northerly direction and then in a clockwise direction to the point and place of beginning.

Area II

Beginning at a point in the southerly boundary line of the property as described in Deed Book 3873, page 653 where it intersects with the northeasterly right-of-way margin of Lancaster Highway (United States Highway 521), said point being a common corner of the present Charlotte City Limit and the Pineville Town Sphere of Influence Limit; thence, leaving the present Charlotte City Limit and following a line along the northeasterly right-of-way margin of Lancaster Highway (United States Highway 521) the Charlotte City and Pineville Town Sphere of Influence Limit, approximately 8,076 feet, crossing Providence Road West (State Road 3626) to a point where said line intersects with the southerly right-of-way margin of Providence Road West (State Road 3626), said point being a common corner of Charlotte City and Pineville Town Sphere of Influence Limit; thence, continuing with the Charlotte City and Pineville Town Sphere of Influence Limit running in a southwesterly direction following a line along the southerly right-of-way margin of Providence Road West (State Road 3626) approximately 3,345 feet crossing the centerline of Lancaster Highway (United States Highway 521) to a point where said line intersects with the Mecklenburg County, North Carolina and Lancaster County, South Carolina line; thence, leaving the Pineville Town Sphere of Influence Limit and running in a southeasterly direction with the Mecklenburg County, North Carolina and the Lancaster County, South Carolina line crossing Clems Branch, Carolina Academy Road (State Road 3634) and Lancaster Highway

(United States Highway 521) to a point, the common corner of Mecklenburg County, North Carolina, Union County, North Carolina, and Lancaster County, South Carolina located in the Six Mile Creek Channel; thence, running in a northeasterly direction with the Mecklenburg County - Union County line, said line being the Six Mile Creek Channel crossing Marvin Road (State Road 3635) and Providence Road to a point, said point being a common corner of Mecklenburg County and Union County; thence, leaving the Six Mile Creek Channel and continuing with the Mecklenburg County and Union County line and running in a northeasterly direction crossing Tilley Morris Road (State Road 3445), Rocking Chair Road (State Road 4344), Weddington Road (State Road 3468), Simfield Church Road (State Road 3447), and Pleasant Plains Road (State Road 3448) to a point where the northerly right-of-way margin of Pleasant Plains Road (State Road 3448) intersects with said county line, said point being a common corner of Charlotte City and Matthews Town Sphere of Influence Limit; thence, continuing with Charlotte City and Matthews Town Sphere of Influence Limit and running in a northwesterly direction with the northerly right-of-way margin of Pleasant Plains Road (State Road 3448), approximately 2022 feet to a point, where said right-of-way margin intersects with the northerly right-of-way of McKee Road (State Road 3440) if extended northeasterly across Pleasant Plains Road (State Road 3448); thence, continuing with Charlotte City and Matthews Town Sphere of Influence Limit and running in a southwesterly direction across Pleasant Plains Road and following along the northerly margin of McKee Road (State Road 3440), approximately 6110 feet to a point in the easterly right-of-way margin of Weddington Road (State Road 3468); thence, continuing with Charlotte City and Matthews Town Sphere of Influence Limit and running in a northeasterly direction following along the easterly right-of-way margin of Weddington Road (State Road 3468) to a point, a common corner of the present Charlotte City Limit and Matthews Town Sphere of Influence Limit; thence, leaving the Charlotte City and Matthews Town Sphere of Influence Limit and running with the various courses and distances of the present Charlotte City Limit line beginning in a westerly direction and then in a counterclockwise direction to the point and place of beginning less and excepting, however, from the above description, a portion of Mecklenburg County adjoining the Union County line previously annexed by the Town of Weddington, North Carolina described as follows: Beginning at a point in the Town limits of the Town of Weddington, North Carolina, said point being also located in the centerline of Tilley Morris Road (State Road Number 1345 in Union County, North Carolina, and State Road Number 3445 in Mecklenburg County, North Carolina), said beginning point being

located one call from the westernmost corner of Lot 5 of Hearthstone Subdivision as shown in Plat Cabinet A File Number 115-A, Union County Register of Deeds as follows: S 6-23 E, 30 feet; thence, from said beginning point continuing along and with the Town Limits of the Town of Weddington, North Carolina, and the centerline of Tilley Morris Road (State Road Number 1345 in Union County and State Road Number 3445 in Mecklenburg County), as follows: S 83-37 W, 63.19 feet; thence, continuing with the Town Limits and the centerline of Tilley Morris Road (State Road Number 1345 in Union county, and State Road Number 3445 in Mecklenburg County). N 6-23 W, 30 feet, to a point marking the northeastern intersection of Tilley Morris road (State Road Number 1345 in Union County, and State Road Number 3445 in Mecklenburg County) and Rocking Chair Road; thence, continuing with the Town Limits, with the arc of a circular curve to the right, said arc having a radius of 70.13 feet an arc distance of 49.52 feet to a point on the easterly right-of-way margin of Rocking Chair Road; thence, with said right-of-way line and the Town Limits N 34-04-40 E, 185.56 feet to a point on said right-of-way line; thence, with said right-of-way line and the Town Limits in a northeasterly direction along the arc of a circular curve to the left, said arc having radius of 1143.16 feet an arc distance of 165.45 feet to a point marking the southwestern property corner of Lot 7 of Hearthstone Subdivision as shown in Plat Book 18, page 213, Mecklenburg County Register of Deeds, and; thence with the southern property line of Lot 7 of Hearthstone Subdivision as shown in Plat Book 18, page 213, Mecklenburg County Register of Deeds and the Town Limits, S 62-34-40 E, 193.58 feet to a point marking the northeasternmost property corner of Lot 5 of Hearthstone Subdivision as shown in Plat Cabinet A File Number 115-A, Union County Register of Deeds, and running thence with the Town Limits S 51-05-30 W, 394.66 feet to a point on the northern right-of-way margin of Tilley Morris Road (State Road Number 1345 in Union County, North Carolina, and State Road Number 3445 in Mecklenburg County, North Carolina), the westernmost corner of Lot 5 of Hearthstone Subdivision as shown in Plat Cabinet A File Number, 115-A, Union County Register of Deeds; thence, with the Town Limits S 6-23 E, 30 feet to a point said point being located in the centerline of Tilley Morris Road (State Road Number 1345 in Union County, and State Road Number 3445, in Mecklenburg County), the point and place of beginning.

Section 5. It is hereby declared as a matter of State policy that:

(a) No municipality shall hereafter be incorporated within the areas described in Section 4 of this act; and

(b) No district, unit of government or other entity shall hereafter be incorporated, formed or otherwise created within the areas described in Section 4 above, or adjacent thereto, if the creation of such district, unit of government or other entity would limit in any manner the City of Charlotte's authority to annex any portion of the areas described in Section 4 above.

Section 6. Any action taken by any municipality in violation of Section 4 shall be null and void.

Section 7. Nothing in Sections 4 and 5 of this act shall be construed to permit the annexation of any property by the City of Charlotte, except in accordance with applicable law.

Section 8. Any Superior Court Judge assigned to hold court in Mecklenburg County may enter any consent judgment in University Research Park, Inc., et al v. City of Charlotte (86-CVS-7304) which implements any portion of the settlement described in Section 1 of this act and is consistent with the terms of this act.

Section 9. The provisions of Sections 4 and 5 of this act shall expire automatically on July 1, 1994, and shall not be enforceable thereafter.

Section 10. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 15th day of May, 1987.

S.B. 143

CHAPTER 202

AN ACT TO PROVIDE THAT THE BOARD OF COUNTY COMMISSIONERS OF ONSLOW COUNTY MAY APPOINT SPECIAL PEACE OFFICERS WITH LIMITED JURISDICTION.

The General Assembly of North Carolina enacts:

Section 1. The Board of County Commissioners of Onslow County may appoint county employees as special peace officers who, after taking the oath of office prescribed for peace officers, shall have the same powers as other law enforcement officers. The Board of County Commissioners shall state in the appointment the portion of the property owned or leased by Onslow County in which that officer shall have territorial jurisdiction, and the officer shall have jurisdiction only in that area. Officers so appointed are expressly governed by G.S. Chapter 17C.

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 18th day of May, 1987.

S.B. 407

CHAPTER 203

AN ACT TO ALLOW SAMPSON COUNTY AND MUNICIPALITIES LOCATED THEREIN TO ENGAGE IN ECONOMIC DEVELOPMENT ACTIVITIES.

The General Assembly of North Carolina enacts:

Section 1. Section 4 of Chapter 639 of the 1985 Session Laws, as amended by Chapters 846, 848, 849, 858, 874, 911, 916, and 921 of the 1985 Session Laws, is amended by adding after the phrase "Duplin," the phrase "Sampson,".

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 18th day of May, 1987.

S.B. 492

CHAPTER 204

AN ACT TO AUTHORIZE MUNICIPALITIES WITHIN GASTON COUNTY TO ENTER INTO AGREEMENTS CONCERNING ANNEXATIONS.

The General Assembly of North Carolina enacts:

Section 1. It is the purpose of this act to authorize municipalities to enter into agreements concerning annexation in order to enhance planning by such municipalities as well as residents and property owners in areas adjacent to such municipalities.

Sec. 2. The words defined in this section shall have the meanings indicated when used in this act:

(1) "Annexation" means any extension of a municipality's corporate limits as authorized by Article 4A of Chapter 160A of the General Statutes, the charter of the municipality, or any local act applicable to the municipality, as such statutory authority exists now or is hereafter amended.

(2) "Agreement" means any written agreement authorized by this act.

(3) "Municipality" means any city as defined by G.S. 160A-1.

Sec. 3. Two or more municipalities may enter into agreements with each other in order to designate one or more areas which are not subject to annexation by one or more of the participating municipalities. The agreements shall be of reasonable duration, but not to exceed 30 years, and shall be approved by resolution of the governing board and executed by the mayor of each municipality and spread upon its minutes.

Sec. 4. (a) The agreement shall:

- (1) State the duration of the agreement.
- (2) Describe clearly the area or areas subject to the agreement. The boundaries of such area or areas may be established at such locations as the participating municipalities shall agree. Thereafter, any participating municipality may follow such boundaries in annexing any property, whether or not such boundaries follow roads or natural topographical features.
- (3) Specify one or more participating municipalities which may not annex the area or areas described in the agreement.
- (4) State the effective date of the agreement.
- (5) Require each participating municipality which proposes any annexation to give written notice to the other participating municipality or municipalities of the annexation at least 60 days before the adoption of any annexation ordinance, provided, however, that the agreement may provide for a waiver of this time period by the notified municipality.
- (6) Include any other necessary or proper matter.

(b) The written notice required by subdivision (a)(5) of this section shall describe the area to be annexed by a legible map, clearly and accurately showing the boundaries of the area to be annexed in relation to: the area or areas described pursuant to subdivision (a)(2) of this section, roads, streams and any other prominent geographical features. Such notice shall not be effective for more than 180 days.

Sec. 5. From and after the effective date of the agreement, no participating municipality may consider in any manner the annexation of any area in violation of this act or the agreement. From and after the effective date of the agreement, no participating municipality may annex all or any portion of any area in violation of this act or the agreement.

Sec. 6. Nothing in this act shall be construed to authorize the annexation of any area which is not otherwise subject to annexation under applicable law.

Sec. 7. (a) Each provision of the agreement shall be binding upon the parties thereto. A participating municipality which believes that another participating municipality is violating this act or the agreement may file a petition in the superior court of the county where any of the territory proposed to be annexed is located, seeking review of the action of the municipality alleged to have violated this act or the agreement.

(b) Within five days after the petition is filed with the court, the petitioning municipality shall serve copies of the petition by certified mail, return receipt requested, upon the respondent municipality.

(c) Within 15 days after receipt of the copy of the petition for review, or within such additional time as the court may allow, the respondent municipality shall transmit to the reviewing court:

- (1) a transcript of the portions of the municipal journal or minute book in which the procedure for annexation has been set forth;
- (2) a copy of any other document received or approved by the respondent municipality's governing board as part of the annexation.

(d) The court shall fix the date for review of the petition so that review shall be expeditious and without unnecessary delays. The review shall be conducted by the court without a jury. The court may hear oral arguments and receive written briefs, and may take evidence intended to show either:

- (1) that the provisions of this act were not met; or
- (2) that the provisions of the agreement were not met.

(e) Upon a finding that the respondent municipality has not violated this act or the agreement, the court may affirm the action of the respondent municipality without change. Upon a finding that the respondent municipality has violated this act or the agreement, the court may:

- (1) Remand to the respondent municipality's governing board any ordinance adopted pursuant to Parts 2 or 3, Article 4A of Chapter 160A of the General Statutes, as the same exists now or is hereafter amended, for amendment of the boundaries, or for such other action as is necessary, to conform to the provisions of this act and the agreement.
- (2) Declare any annexation begun pursuant to any other applicable law to be null and void. If the respondent municipality shall fail to take action in accordance with the court's instructions upon remand under subdivision (e)(1) of this section within three months from receipt of such instructions, the annexation proceeding shall be deemed null and void.

(f) Any participating municipality which is a party to the review proceedings may appeal from the final judgment of the Superior Court under rules of procedure applicable in other civil cases. The appealing party may apply to Superior Court for a stay in its final determination, or a stay of the annexation ordinance, whichever shall be appropriate, pending the outcome of the appeal to the appellate division; provided, that the Superior Court may, with the agreement of

the parties, permit annexation to be effective with respect to any part of the area concerning which no appeal is being made and which can be incorporated into the respondent municipality without regard to any part of the area concerning which an appeal is being made.

(g) If part or all of the area annexed under the terms of a challenged annexation ordinance is the subject of an appeal to the Superior Court or appellate division on the effective date of the ordinance, then the ordinance shall be deemed amended to make the effective date with respect to such area the date of the final judgment of the Superior Court or appellate division, whichever is appropriate, or the date the respondent municipality's governing board completes action to make the ordinance conform to the court's instructions in the event of remand.

(h) This act does not authorize any court to stay any annexation proceeding, except as specifically set forth in subsections (f) and (g) of this section.

Sec. 8. This act shall apply only to municipalities located wholly or partly in Gaston County.

Sec. 9. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 18th day of May, 1987.

S.B. 518

CHAPTER 205**AN ACT TO REVISE AND CONSOLIDATE THE CHARTER OF
THE CITY OF SALISBURY AND TO REPEAL PRIOR
CHARTER ACTS.**

The General Assembly of North Carolina enacts:

Section 1. The Charter of the City of Salisbury is hereby revised and consolidated to read as follows:

"CHARTER OF THE CITY OF SALISBURY**"CHAPTER I****"Incorporation and Corporate Powers**

"Sec. 1.1. *Incorporation and Corporate Powers.* The inhabitants of the City of Salisbury are a body corporate and politic under the name of the 'City of Salisbury.' Under that name they have all of the powers, duties, rights, privileges, and immunities conferred and imposed upon cities by the general law of North Carolina.

"CHAPTER II**"Corporate Boundaries****"Article 1. City Boundaries**

"Sec. 2.1. *City Boundaries.* Until changed in accordance with law, the boundaries of the City of Salisbury are set out on a map entitled 'Boundary Map of the City of Salisbury, North Carolina.' The map is maintained in the office of the city clerk, as required by G.S. 160A-22.

"CHAPTER III**"Governing Body**

"Sec. 3.1. *Structure of governing body; number of members.* The governing body of the City of Salisbury is the City Council, which has five members.

"Sec. 3.2. *Manner of election of Council.* The qualified voters of the entire City elect the members of the Council.

"Sec. 3.3. *Term of office of members of the Council.* Members of the Council are elected to two-year terms.

"Sec. 3.4. *Election of Mayor, Mayor Pro Tem; term of office.* At the organizational meeting of the Council following each election, the Council shall elect one of its members to serve as Mayor and one of its members to serve as Mayor Pro Tem. The Mayor and Mayor Pro Tem shall serve as such at the pleasure of the Council and shall have the same powers as the other members of the Council to vote upon all measures coming before it. The Mayor Pro Tem, as well as the Mayor, shall have the authority to execute contracts, deeds or other legal documents on behalf of the City.

"CHAPTER IV**"Elections**

"Sec. 4.1. *Conduct of City elections.* City officers shall be elected on a nonpartisan basis and the results determined by plurality, as provided by G.S. 163-292.

"CHAPTER V**"Administration**

"Sec. 5.1. *City to operate under Council-Manager plan.* The City of Salisbury operates under the Council-Manager plan as provided in Part 2 of Article 7 of Chapter 160A of the General Statutes. In addition to those powers delineated in G.S. 160A-148, the city manager may:

- (1) Approve the acquisition by the City of real property having a value of ten thousand dollars (\$10,000) or less.
- (2) Award, approve, and execute contracts on behalf of the City when the amount of such contract does not exceed thirty thousand dollars (\$30,000); provided that the City Council

shall have approved a sufficient appropriation in the annual budget for the current fiscal year for the general purpose specified in the contract. In addition, the city manager is authorized to approve and execute amendments to contracts, including contracts initially approved by the City Council, when the amount in question does not exceed thirty thousand dollars (\$30,000).

- (3) Approve agreements permitting encroachments into setbacks and rights-of-way.
- (4) Accept dedicated streets for City maintenance provided such streets meet City standards.
- (5) Settle claims against the City of Salisbury for damages to personal property when the full amount of damages to such property is ascertained and the amount of such damages does not exceed one thousand dollars (\$1,000). The city manager is hereby authorized to execute releases of persons, firms and corporations because of damages to personal property belonging to City of Salisbury when the full amount of damages to such property is ascertained and the amount of such damages does not exceed one thousand dollars (\$1,000).
- (6) Convey interests in real or personal property owned by the City by private negotiation or sale, with respect to parcels of real property or personal property having a fair market value of five thousand dollars (\$5,000) or less, and Article 12 of Chapter 160A of the General Statutes shall not apply to such dispositions.
- (7) Appoint a city clerk whose duties shall be as prescribed by the general laws of North Carolina; provided such appointment shall be subsequently approved by the City Council.

"CHAPTER VI

"Boards and Commissions

"Sec. 6.1. *Boards and commissions.* In addition to any authorities, boards or commissions now or hereafter created and established by or pursuant to the General Statutes, special or local acts of the General Assembly, or this Charter, the City Council may create and establish, by ordinance or resolution, such other authorities, boards and commissions as it may deem necessary or appropriate to the administration, regulation, and operation of services, activities, and functions which the City is authorized by law to perform, regulate, and carry on.

"CHAPTER VII

"Planning and Regulatory Powers

"SUBCHAPTER A. SUPPLEMENTAL POWERS OF
REGULATION

"Article 1. In General

"Sec. 7.1. *Powers supplemental to general law.* The City Council shall continue to have power to make and provide for the execution of such regulatory ordinances as it may deem proper not inconsistent with the law of the land, and the City of Salisbury shall have all the powers granted to municipalities by the general laws of North Carolina, as the same may now or hereafter be enacted. In addition, the City of Salisbury shall have the powers granted by this Charter as the same may be amended from time to time, and the enumeration of specific powers or procedures in this chapter shall be supplemental to and not in limitation of the powers or procedures provided for by general laws of North Carolina.

"Article 2. Traffic Control

"Sec. 7.2. *Traffic-control devices.*

(a) The City Council, upon finding as a fact that the density of population and volume of vehicular and pedestrian traffic in the City of Salisbury requires prompt, continuing, and effective control of such traffic through the installation, removal, relocation and change of official traffic-control devices in order to protect and promote the public safety and convenience, may designate, by ordinance, an official of the City to make or cause to be made, upon the basis of engineering and traffic investigations, installations, removals, relocations and changes of official traffic control devices in accordance with accepted traffic engineering principles and standards and in accordance with the procedures hereinafter set forth.

(b) An 'official traffic-control device,' as used in this section, means a sign, signal, marking or device, including a parking meter, which is designed and intended to regulate vehicular or pedestrian traffic.

(c) Whenever an official traffic-control device is installed, removed, relocated or changed pursuant to this section, a notation thereof shall be made or cause to be made by the designated official on a map or record book or any other combination thereof as may be determined by the City Council and maintained for that purpose. Such map or record book or combination thereof shall be retained permanently in the office of the city clerk and shall be styled, as the case may be, as 'Map (or record book) of Location of Traffic-Control Devices.' Typed, photographic or other copies of any part of such map or record book, certified by the city clerk, shall be admitted in evidence in all courts and shall have the same force and effect as

would the original thereof.

(d) For purposes of enforcement, the installation, relocation or change of an official traffic-control device pursuant to this section shall have the force of law immediately upon such installation, relocation or change.

"Sec. 7.3. *Obstruction of private alleys.* If, in the opinion of the City Council, a fire hazard is created by the obstruction of private alleys, the City Council may adopt regulations governing the obstruction of private alleys, whether by reason of the parking of motor vehicles or otherwise, but such regulations shall not be construed so as to restrict or limit the legal right of the owners of interests in a private alley to close the alley or to exercise other property rights therein.

"Article 3. Drainage and Sanitation

"Sec. 7.10. *Drainage of Premises.* The City Council shall have power to require that all property owners provide adequate drainage facilities to the end that their premises be free from standing water and permit the natural flow of water thereon to be taken care of, and to provide that in case of failure on the part of such owner or owners to so provide the same, to go upon their premises and construct the necessary facilities and to charge the costs thereof against the premises so improved. After construction of the necessary facilities on the part of the City, the City shall have no further obligation for maintenance of said facilities.

"Sec. 7.11. *Connection of sanitation facilities.* The City Council shall have power to require the owner or owners of private drains, sinks, and privies, to fill up, cleanse, drain, repair, fix, and improve the same as they may be ordered, and to cause all drains, toilets, sinks, and all water or sewerage facilities to be connected with the City's systems, and to provide that in case of failure on the part of such owner or owners to comply with any such order, to go upon their premises and perform such work as may be necessary to comply with such order, and to charge the cost thereof against the premises upon which such work is performed. After performance of such work as may be necessary by the City, the City shall have no further obligation for maintenance of said facilities.

"Sec. 7.12. *Weeds and undergrowth.* The City Council shall have power to require the owner or owners of all premises, vacant or improved, to keep same free from trash, obnoxious weeds or undergrowth as they may be ordered and to provide that in case of failure on the part of such owner or owners to comply with any such order, to go upon their premises and perform such work as may be

necessary to comply with such order, and to charge the cost thereof against the premises upon which such work is performed. After performance of such work as may be necessary by the City, the City shall have no further obligation for maintenance of said premises.

"Sec. 7.13. *Costs a lien as for taxes.* The costs to the City of any work performed under this Article shall constitute a lien upon the premises upon which the work is performed and may be collected in the same manner as taxes upon real property. The term 'costs' as used in this section shall include interest at the same rate as that used for taxes.

"SUBCHAPTER B. PLANNING, SUBDIVISION, AND BUILDING REGULATIONS

"Article 1. Subdivision Regulations

"Sec. 7.20. *Subdivision Regulations.* In addition to those powers delineated in Part 2 of Article 19 of Chapter 160A of the General Statutes, the City Council may, by ordinance, provide that the Salisbury Planning Board shall have power to approve, in whole or in part, to otherwise modify, or to disapprove all final subdivision plats. Such ordinance may provide that the Salisbury Planning Board shall approve or disapprove the final plat not later than 60 days after the submission thereof; otherwise, such plat shall be deemed to have been approved and a certificate to that effect shall be issued by the Planning Board on demand; provided, however, that the applicant for the Planning Board's approval may waive this requirement and consent to the extension of such period. The grounds for disapproval of any plat shall be stated upon the records of the Planning Board. Said regulations shall provide that an appeal may be taken from the Planning Board action to the City Council which shall have power to approve, disapprove, in whole or in part, or otherwise modify the action of said Planning Board.

In addition, the City Council may designate, by ordinance, an official of the City who shall have power to approve, disapprove, in whole or in part, or otherwise modify minor subdivision plats, as said plats are defined in such ordinance.

"Sec. 7.21. *Guarantee of Improvements.* In addition to those powers delineated in G.S. 160A-372, the City Council may provide in lieu of the completion prior to the final approval of a subdivision plat of such improvements and installations required by the subdivision ordinance of the City, for an assessment under applicable laws governing assessments for local improvements whereby the City may make said improvements and installations at the cost of the owners of the property within the subdivision.

"CHAPTER VIII**"Services and Facilities****"SUBCHAPTER A. ESTABLISHMENT AND MAINTENANCE OF SERVICES AND FACILITIES****"Article 1. In General**

"Sec. 8.1. *Powers continued.* The City Council shall continue to have power to establish and maintain public services and facilities deemed necessary or desirable for the health, safety, comfort, welfare, convenience and good order of the public, not inconsistent with the law of the land, the general laws of North Carolina as the same may now or hereafter be enacted, the provisions of this Charter as the same may be amended from time to time, and the provisions of any other laws now or hereafter applicable to the City of Salisbury.

"Article 2. Water and Sewer

"Sec. 8.10. *Dedication of water and sewer lines.* Before any person, firm or corporation shall connect in any manner any privately owned water or sewer line or lines with any water or sewer line or lines of the City of Salisbury, such person, firm or corporation shall, by proper written instrument, in consideration of making such connection and the benefits to be derived therefrom, dedicate, give, grant and convey such water or sewer lines to the City of Salisbury. No such connection shall be made with the City water or sewer lines without the express approval of the City, nor shall such connection be effected except in accordance with the regulations of the City governing same, and upon payment of any reasonable charges made therefor. Should any person, firm or corporation connect any privately owned water or sewer line or lines without first dedicating, giving, granting and conveying same to the City, the act of connecting shall be deemed a dedication, gift, grant and conveyance of such lines to the City and the City may accept same or may order the disconnection of such lines; provided, that the City may enter into contracts, when duly authorized by a majority of the City Council members voting thereon, with any person, firm or corporation whereby water or sewer lines may be laid within or without the City and connected to the City's systems under such terms as may be agreed upon, notwithstanding any provisions of this section.

"Article 3. Refuse Disposal

"Sec. 8.20. *Service Contracts.* In addition to those powers delineated in G.S. 160A-192 and in Part 1 of Article 16 of Chapter 160A of the General Statutes, the City Council is further authorized, in its discretion, to lease or to sell, at private sale, any lands now or hereafter owned or acquired by the City, to any person, firm or corporation contracting with the City for disposal of municipally-

collected refuse, for use as a plant site or sites, upon such terms and considerations as the City Council may prescribe.

"SUBCHAPTER B. EMINENT DOMAIN AND LOCAL IMPROVEMENTS

"Article 1. Eminent Domain

"Sec. 8.30. *Powers and procedures.* In addition to those powers delineated in G.S. 40A, Articles 1 and 3, the City of Salisbury may use the procedure and authority prescribed in Article 9 of Chapter 136 of the General Statutes, as now or hereafter amended, in the exercise of its authority of eminent domain for the acquisition of property to be used for streets and highways, water supply and distribution systems, sewage collection and disposal systems, and airports; provided further, that whenever therein the words 'Secretary' or 'Secretary of Transportation' appear, they shall be deemed to include the 'City Manager'.

"Article 2. Local Improvements

"Sec. 8.40. *Streets, curbs and gutters, sidewalks, and driveways.*

(a) *Petition unnecessary.* In addition to any authority which is now or may hereafter be granted to the City for making street, curb and gutter or sidewalk improvements, the City Council is hereby authorized to order such improvements and to assess the total cost thereof against abutting properties without the necessity of a petition of property owners.

(b) *Sidewalk repairs.* The Council is further authorized to order or to make sidewalk repairs and driveway repairs across sidewalks according to standards and specifications of the City, and to assess the total cost thereof against abutting properties without the necessity of a petition of property owners.

(c) *Sidewalk on one side of street.* If a sidewalk is constructed on only one side of the street, the cost thereof may be assessed against the property abutting on both sides of the street, unless there already exists a sidewalk on the other side of the street, the total cost of which was assessed against the abutting property.

(d) *Notice to property owners.* Before the City Council shall order improvements to be made pursuant to subsection (a) or (b) of this section it shall hold a public hearing thereon, and shall give the owners of the property to be assessed written notice of such public hearing and the proposed action.

(e) *Assessment procedure and effect.* In ordering street, curb and gutter or sidewalk improvements or sidewalk repairs and assessing the cost thereof, the Council shall follow the procedures provided by the

General Statutes for street and sidewalk improvements, except those provisions relating to the petition of property owners and the sufficiency thereof. The effect of levying assessments pursuant to this act shall for all purposes be the same as if they were levied under authority of the General Statutes.

(f) *Duty of maintenance for driveways and sidewalks.* It is the duty of every property owner to maintain the sidewalks and driveways abutting his property in good repair and safe condition.

(g) *Payment of assessments.* Any special assessment of the City for any purpose amounting to less than one hundred dollars (\$100.00) shall be paid in cash within 90 days of confirmation rather than in annual installments, and shall bear interest as taxes. Any property owner shall have the option of paying assessments for local improvements in cash or in not less than two nor more than 10 equal annual installments, as may have been determined by the City Council in the resolution ordering the improvements. With respect to payment by installment, the Council may direct:

- (1) That installments shall become due and payable on the same date when property taxes of the City are due and payable, or
- (2) That the first installment with interest shall become due and payable 60 days after the date of the confirmation of the assessment roll, and one subsequent installment and interest shall be due and payable on the same day of the month in each successive year until the assessment is paid in full. Said assessments and installments shall bear interest as taxes.

(h) *Assessment where street is City limit line.* In those instances where the City limit line runs along a street or road the City Council may order the improvements and assess the cost thereof against property abutting on both sides of the street as if all of the abutting property were within the corporate limits, regardless of whether the improvement is ordered pursuant to this section or other general law.

(i) *Supplementary authorization.* The procedure herein outlined shall be supplementary in addition to all other procedure authorized by law relating to improvements or special assessments.

"Article 3. Economic Development Projects

"Sec. 8.50. *Economic Development Projects.*

(a) *Definition.* In this section economic development project means an economic capital development project within a certain defined area or areas of the City as established by the City Council,

comprised of one or more buildings or other improvements and including any public and/or private facilities. Said project may include programs or facilities for improving downtown redevelopment, 'pocket of poverty' or other federal or State assistance programs which the City Council determines to be in need of economic capital development or revitalization and which qualify for capital assistance under applicable federal or State program.

(b) Authorization.

- (1) In addition to any other authority granted by law, the City of Salisbury may accept grants, expend funds, make grants or loans, acquire property and participate in capital economic development projects which the City Council determines will enhance the economic development and revitalization of the city in accordance with the authority granted herein. Such project may include both public and/or private buildings or facilities financed in whole or in part by federal or State grants (including but not limited to urban development action grants) and may include any capital expenditures which the City Council finds necessary to comply with conditions in any federal or State grant agreements and which the City Council finds will complement the project and improve the public tax base and general economy of the City. By way of illustration, but not limitation, such a project may include the construction or renovation of any one or combination of the following projects:

- a. Privately owned hotel.
- b. Privately owned office building.
- c. Housing.
- d. Parking facilities.
- e. Industrial buildings.
- f. Site improvements.
- g. Privately owned commercial building, including warehouses.

Such project may be partially financed with City funds received from federal or State sources and being granted or loaned to the private owner for said construction or renovation; in addition, other City funds from any sources may be used for acquisition, construction, leasing and/or operation of facilities by the City for the general public and for capital improvements to public facilities which will support and enhance the private facilities and the general economy of the City.

- (2) When the City Council finds that it will promote the economic development or revitalization in the City, the City may acquire, construct, and operate or participate in the acquisition, construction, ownership and operation of an economic development project or of specific buildings or facilities within such a project and may comply with any State or federal government grant requirements in connection therewith. The City may enter into binding contracts with one or more private parties or governmental units with respect to acquiring, constructing, owning or operating such a project. Such a contract may, among other provisions, specify the responsibilities of the City and the developer or developers and operators or owners of the project, including the financing of the project. Such a contract may be entered into before the acquisition of any real property necessary to the project by the City or the developer or other parties.

(c) Property acquisition. An economic development project may be constructed on property acquired by the developer or developers, or on property directly acquired by the City, or on property acquired by the Redevelopment Commission or its successors while exercising the powers, duties and responsibilities pursuant to G.S. 160A-505.

(d) Property disposition. In connection with an economic development project, the City may convey interests in property owned by it, including air rights over public facilities, as follows:

- (1) If the property was acquired under the urban redevelopment law, the property interests may be conveyed in accordance with special or general law.

(2) If the property was acquired by the City directly, the City may convey property interests by any procedure set forth in its City Charter, special act or the general law or by private negotiation or sale.

(e) Construction of the project. A contract between the City and the developer or developers may provide that the developer or developers shall be responsible for the construction of the entire economic development project. If so, the contract shall include such provisions as the City Council deems sufficient to assure that any public facilities included in the project meet the needs of the City and are constructed at a reasonable price. Any funds loaned by the City, pursuant to this paragraph, to a private developer, and used by said developer in the construction of a project on private property shall not be deemed an expenditure of public funds.

(f) Operation. The City may contract for the operation of any public facility or facilities included in an economic development project by a person, partnership, firm or corporation, public or

private. In addition, the City, upon consideration, may contract through lease or otherwise whereby it may operate privately constructed parking facilities to serve the general public. Such a contract shall include provisions sufficient to assure that any such facility or facilities are operated for the benefit of the citizens of the City.

"CHAPTER IX

"Miscellaneous

"SUBCHAPTER A. SALE OF PROPERTY

"Sec. 9.1. *Public or private sale of property.* The City Council may publicly or privately sell, lease, rent, exchange or otherwise convey, or cause to be publicly or privately sold, leased, rented, exchanged or otherwise conveyed, any property, real or personal or any interest in such property, belonging to the City.

"SUBCHAPTER B. LEASE OF PROPERTY

"Sec. 9.10. *Lease of Property.* Notwithstanding the provisions of G.S. 160A-272, the City Council may, in its discretion, lease city-owned property for such terms and upon such conditions as the Council may determine, including terms of more than ten years without the necessity of following any procedures other than those required by G.S. 160A-272 for leases of ten years or less.

"SUBCHAPTER C. ABC PROFITS

"Sec. 9.20. *ABC Profits.* From the profits of any liquor stores which are or may hereafter be operated in Rowan County, the county shall at the end of each quarterly period after an accounting has been received by it from the county board of alcoholic control, pay over to the City of Salisbury thirty per cent of the net profits received by the county from the operation of a liquor store or stores, and pay twenty percent of the net profits received by the county from the operation of said store or stores to all other incorporated municipalities within the County of Rowan to be apportioned to said municipalities based upon the last census."

Sec. 2. The purpose of this act is to revise the Charter of the City of Salisbury and to consolidate herein certain acts concerning the property, affairs, and government of the City. It is intended to continue without interruption those provisions of prior acts which are consolidated into this act, so that all rights and liabilities that have accrued are preserved and may be enforced.

Sec. 3. This act shall not be deemed to repeal, modify, or in any manner affect any of the following acts, portions of acts, or amendments thereto, whether or not such acts, portions of acts, or amendments are expressly set forth herein:

(1) Any acts concerning the property, affairs, or government of public schools in the City of Salisbury.

(2) Any acts validating, confirming, approving, or legalizing official proceedings, actions, contracts, or obligations of any kind.

(3) The following enumerated acts:

Chapter 246, Private Laws of 1848-49, Section 33

Chapter 118, Private Laws of 1857

Chapter 21, Private Laws of 1866

Chapter 186, Private Laws of 1899, Section 99

Chapter 266, Private Laws of 1901, Sections 3 and 4

Chapter 103, Private Laws of 1931, Section 6

Chapter 229, Public-Local Laws of 1933, Section 2

Chapter 43, Public-Local Laws of 1937

Chapter 22, Public-Local Laws of 1939

Chapter 241, Session Laws of 1947

Chapter 812, Session Laws of 1957

Chapter 872, Session Laws of 1957

Chapter 880, Session Laws of 1961

Chapter 56, Session Laws of 1963

Chapter 791, Session Laws of 1967

Chapter 76, Session Laws of 1967, Section 1

Chapter 270, Session Laws of 1971

Chapter 733, Session Laws of 1971

Chapter 176, Session Laws of 1973

Chapter 190, Session Laws of 1973

Chapter 910, Session Laws of 1985

Sec. 4. The following acts, having served the purpose for which they were respectively enacted, or having become obsolete under existing circumstances or unnecessary because of other provisions of law or because of having been carried forward in this act, are hereby repealed:

Chapter 246, Private Laws of 1848-49, except Section 33

Chapter 251, Private Laws of 1855

Chapter 260, Private Laws of 1855

Chapter 26, Public Laws of 1865 (adjourned session)

Chapter 3, Private Laws of 1866

Chapter 87, Private Laws of 1868-69

Chapter 123, Private Laws of 1868-69

Chapter 97, Private Laws of 1870-71

Chapter 173, Private Laws of 1874-75, as to Salisbury
Chapter 49, Public Laws of 1876-77
Chapter 10, Public Laws of 1879, Sections 1 and 2
Chapter 69, Private Laws of 1883
Chapter 59, Private Laws of 1891
Chapter 66, Private Laws of 1891
Chapter 234, Private Laws of 1891
Chapter 283, Private Laws of 1891
Chapter 1, Private Laws of 1893
Chapter 89, Private Laws of 1893
Chapter 266, Private Laws of 1899
Chapter 186, Private Laws of 1899, except Section 99
Chapter 482, Public Laws of 1901
Chapter 266, Private Laws of 1901, Sections 1 and 2
Chapter 287, Private Laws of 1901
Chapter 330, Private Laws of 1901
Chapter 355, Private Laws of 1903
Chapter 366, Private Laws of 1903
Chapter 394, Private Laws of 1903
Chapter 245, Private Laws of 1905
Chapter 335, Private Laws of 1907
Chapter 515, Public Laws of 1909, as to Salisbury
Chapter 208, Private Laws of 1909
Chapter 207, Private Laws of 1911
Chapter 566, Public-Local Laws of 1913, as to Salisbury
Chapter 128, Private Laws of 1913
Chapter 235, Private Laws of 1913
Chapter 252, Private Laws of 1913
Chapter 438, Private Laws of 1913
Chapter 38, Private Laws of 1915
Chapter 153, Private Laws of 1915
Chapter 300, Private Laws of 1915
Chapter 242, Private Laws of 1915
Chapter 114, Private Laws, Extra Session of 1921
Chapter 20, Private Laws, Extra Session of 1924
Chapter 62, Private Laws of 1925
Chapter 72, Private Laws of 1925
Chapter 219, Private Laws of 1925
Chapter 68, Private Laws of 1927
Chapter 83, Private Laws of 1927
Chapter 224, Private Laws of 1927, as to Salisbury
Chapter 231, Private Laws of 1927
Chapter 178, Private Laws of 1929
Chapter 197, Private Laws of 1929, as to Salisbury

Chapter 103, Private Laws of 1931, except Section 6
Chapter 78, Private Laws of 1931
Chapter 62, Private Laws of 1933, as to Salisbury
Chapter 175, Private Laws of 1933
Chapter 208, Private Laws of 1933
Chapter 229, Public-Local Laws of 1933, Section 1
Chapter 32, Private Laws of 1937
Chapter 475, Public-Local Laws of 1939
Chapter 498, Public-Local Laws of 1939
Chapter 27, Public-Local Laws of 1941
Chapter 226, Public-Local Laws of 1941
Chapter 379, Public-Local Laws of 1941
Chapter 21, Session Laws of 1945
Chapter 751, Session Laws of 1945
Chapter 82, Session Laws of 1947
Chapter 26, Session Laws of 1949
Chapter 84, Session Laws of 1949
Chapter 926, Session Laws of 1949, as to Salisbury
Chapter 1044, Session Laws of 1949
Chapter 1087, Session Laws of 1949
Chapter 375, Session Laws of 1951
Chapter 107, Session Laws of 1951
Chapter 8, Session Laws of 1953
Chapter 594, Session Laws of 1953
Chapter 744, Session Laws of 1953, as to Salisbury
Chapter 6, Session Laws of 1955
Chapter 18, Session Laws of 1955
Chapter 257, Session Laws of 1955
Chapter 916, Session Laws of 1957
Chapter 353, Session Laws of 1959
Chapter 100, Session Laws of 1963
Chapter 281, Session Laws of 1965
Chapter 76, Session Laws of 1967, Section 1
Chapter 136, Session Laws of 1977
Chapter 1121, Session Laws of 1979
Chapter 851, Session Laws of 1981
Chapter 998, Session Laws of 1981

Sec. 5. No provision of this act is intended, nor shall be construed, to affect in any way any rights or interests (whether public or private):

(1) Now vested or accrued, in whole or in part, the validity of which might be sustained or preserved by reference to any provisions of law repealed by this act;

(2) Derived from, or which might be sustained or preserved in reliance upon, action heretofore taken (including the adoption of ordinances or resolutions) pursuant to or within the scope of any provision of law repealed by this act.

Sec. 6. (a) Existing ordinances and resolutions of the City of Salisbury, and all existing rules or regulations of departments or agencies of the City of Salisbury, not inconsistent with the provisions of this act, shall continue in full force and effect until repealed, modified or amended.

(b) No action or proceeding of any nature (whether civil or criminal, judicial or administrative, or otherwise) pending at the effective date of this act by or against the City of Salisbury or any of its departments or agencies shall be abated or otherwise affected by the adoption of this act.

Sec. 7. Severability. If any provision of this act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of this act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

Sec. 8. All laws and clauses of laws in conflict with the provisions of this act are hereby repealed.

Sec. 9. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 18th day of May, 1987.

S.B. 610

CHAPTER 206

AN ACT TO FURTHER CLARIFY THE AUTHORITY OF THE
CITY OF DURHAM TO MAKE GRANTS AND LOANS FOR
ECONOMIC DEVELOPMENT SERVING THE NEEDS OF
PERSONS OF LOW AND MODERATE INCOME.

The General Assembly of North Carolina enacts:

Section 1. Chapter 255 of the 1983 Session Laws is repealed.

Sec. 2. G.S. 160A-456(a)(1) is amended by inserting the phrase "and construction" immediately following the word "rehabilitation".

Sec. 3. G.S. 160A-456(a)(2) is amended by adding the following at the end of the subsection: "Economic development includes the making of grants or loans, and the subsidization of interest payments on, and the guaranty of, loans for businesses serving the needs of persons of low and moderate income."

Sec. 4. This act applies only to the City of Durham.

Sec. 5. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 18th day of May, 1987.

H.B. 47

CHAPTER 207

AN ACT TO PROVIDE FOR COUNTY SATELLITE JAIL/WORK RELEASE UNITS FOR MISDEMEANANTS.

The General Assembly of North Carolina enacts:

Section 1. Article 10 of Chapter 153A is amended by adding at the end a new Part to read:

"Part 3. Satellite Jail/Work Release Units.

"§ 153A-230. *Legislative policy.*--The policy of the General Assembly with respect to satellite jail/work release units is:

(1) To encourage counties to accept responsibility for incarcerated misdemeanants thereby relieving the State prison system of its misdemeanor population;

(2) To assist counties in providing suitable facilities for certain misdemeanants who receive active sentences;

(3) To allow more misdemeanants who are employed at the time of sentencing to retain their jobs by eliminating the time involved in processing persons through the State system;

(4) To enable misdemeanants to pay for their upkeep while serving time, to pay restitution, to continue to support their dependents, and to remain near the communities and families to which they will return after serving their time;

(5) To provide more appropriate, cost effective housing for certain minimum custody misdemeanants and to utilize vacant buildings where possible and suitable for renovation;

(6) To provide a rehabilitative atmosphere for non-violent misdemeanants who otherwise would face a substantial threat of imprisonment; and

(7) To encourage the use of alternative to incarceration programs.

"§ 153A-230.1. *Definitions.*--Unless otherwise clearly required by the context, the words and phrases defined in this section have the meanings indicated when used in this Part:

(1) 'Office' means the Office of State Budget and Management.

(2) 'Satellite Jail/Work Release Unit' means a building or designated portion of a building primarily designed, staffed, and used for the housing of misdemeanants participating in a work release program. These units shall house misdemeanants only and shall be operated on a full time basis, i.e., seven days/nights a week.

" § 153A-230.2. Creation of Satellite Jail/Work Release Unit Fund.--

(a) There is created in the Office of State Budget and Management the County Satellite Jail/Work Release Unit Fund to provide State grant funds for counties or groups of counties for construction of satellite jail/work release units for certain misdemeanants who receive active sentences. A county or group of counties may apply to the Office for a grant under this section. The application shall be in a form established by the Office. The Office shall:

- (1) develop application and grant criteria based on the basic requirements listed in this Part,
- (2) provide all Boards of County Commissioners and Sheriffs with the criteria and appropriate application forms, technical assistance, if requested, and a proposed written agreement,
- (3) review all applications,
- (4) select grantees and award grants,
- (5) award no more than one million five hundred thousand dollars (\$1,500,000) for any one county or group of counties except that if a group of counties agrees to jointly operate one unit for males and one unit for females, the maximum amount may be awarded for each unit,
- (6) take into consideration the potential number of misdemeanants to be diverted from the State prison system,
- (7) take into consideration the utilization of vacant buildings suitable for renovation where appropriate,
- (8) take into consideration the timeliness with which a county proposes to complete and occupy the unit,
- (9) take into consideration the appropriateness and cost effectiveness of the proposal,
- (10) take into consideration the plan with which the county intends to coordinate the unit with other community service programs such as intensive probation, community penalties, and community service.

When considering the items listed in subdivisions (6) through (10), the Office shall determine the appropriate weight to be given each item.

(b) A county or group of counties is eligible for a grant under this section if it agrees to abide by the basic requirements for satellite jail/work release units established in G.S. 153A-230.3. In order to receive a grant under this section, there must be a written agreement to abide by the basic requirements for satellite jail/work release units

set forth in G.S. 153A-230.3. The written agreement shall be signed by the Chairman of the Board of County Commissioners, with approval of the Board of County Commissioners, and a representative of the Office of State Budget and Management. If a group of counties applies for the grant, then the agreement must be signed by the Chairman of the Board of County Commissioners of each county. Any variation from, including termination of, the original signed agreement must be approved by both the Office of State Budget and Management and by a vote of the Board of County Commissioners of the county or counties.

When the county or group of counties receives a grant under this section, the county or group of counties accepts ownership of the satellite jail/work release unit and full financial responsibility for maintaining and operating the unit, and for the upkeep of its occupants.

" § 153A-230.3. *Basic requirements for satellite jail/work release units.*--(a) Eligibility for unit. The following rules shall govern which misdemeanants are housed in a satellite jail/work release unit:

- (1) Any convicted misdemeanant who:
 - a. receives an active sentence in the county or group of counties operating the unit,
 - b. is employed in the area or can otherwise earn his keep by working at the unit on maintenance and other jobs related to upkeep and operation of the unit or by assignment to community service work, and
 - c. consents to placement in the unit under these conditions, shall not be sent to the State prison system except by written findings of the sentencing judge that the misdemeanant is violent or otherwise a threat to the public and therefore unsuitable for confinement in the unit.
- (2) The county shall offer the program to both men and women.
- (3) The sentencing judge shall make a finding of fact as to whether the misdemeanant is qualified for occupancy in the unit pursuant to G.S. 15A-1352(a). If the sentencing judge determines that the misdemeanant is qualified for occupancy in the unit and the misdemeanant meets the requirements of subdivision (1), then the judge may order the misdemeanant to be placed in the unit. If at any time either prior to or after placement of an inmate into the unit the Sheriff determines that there is an indication of violence, unsuitable behavior, or other threat to the public that could make the prisoner unsuitable for the unit, the Sheriff may hold the prisoner in the county jail while

petitioning the court for a final decision regarding placement of the prisoner.

- (4) The Sheriff may accept work release misdemeanants from other counties provided that those inmates agree to pay for their upkeep, that space is available, and that the Sheriff is willing to accept responsibility for the prisoner after screening.
- (5) The Sheriff may accept work release misdemeanants from the Department of Correction provided that those inmates agree to pay for their upkeep, that space is available, and that the Sheriff is willing to accept responsibility for the prisoner after screening. If accepted, these inmates shall become the sole responsibility of the Sheriff and subject to the rules, regulations, and policies of the satellite jail/work release unit.

(b) Operation of satellite jail/work release unit. A county or group of counties operating a satellite jail/work release unit shall comply with the following requirements concerning operation of the unit:

- (1) The county shall make every effort to ensure that at least eighty percent (80%) of the unit occupants shall be employed and on work release, and that the remainder shall earn their keep by working at the unit on maintenance and other jobs related to the upkeep and operation of the unit or by assignment to community service work, and that alcohol and drug rehabilitation be available through community resources.
- (2) The county shall require the occupants to give their earnings, less standard payroll deductions required by law and premiums for group health insurance coverage, to the Sheriff. The county may charge a per day charge from those occupants who are employed or otherwise able to pay from other resources available to the occupants. The per day charge shall be calculated based on the following formula: The charge shall be either the amount that the Department of Correction deducts from a prisoner's work-release earnings to pay for the cost of the prisoner's keep or fifty percent (50%) of the occupant's net weekly income, whichever is greater, but in no event may the per day charge exceed an amount that is twice the amount that the Department of Correction pays each local confinement facility for the cost of providing food, clothing, personal items, supervision, and necessary ordinary medical

expenses. The per day charge may be adjusted on an individual basis where restitution and/or child support has been ordered, or where the occupant's salary or resources are insufficient to pay the charge.

The county also shall accumulate a reasonable sum from the earnings of the occupant to be returned to him when he is released from the unit. The county also shall follow the guidelines established for the Department of Correction in G.S. 148-33.1(f) for determining the amount and order of disbursements from the occupant's earnings.

- (3) Any and all proceeds from daily fees shall belong to the county's General Fund to aid in offsetting the operation and maintenance of the satellite unit.
- (4) The unit shall be operated on a full-time basis, i.e., seven days/nights a week, but weekend leave may be granted by the Sheriff. In granting weekend leave, the Sheriff shall follow the policies and procedures of the Department of Correction for granting weekend leave for Level 3 minimum custody inmates.
- (5) Good time and gain time shall be applied to these county prisoners in the same manner as prescribed in G.S. 15A-1340.7 and G.S. 148-13 for State prisoners.
- (6) The Sheriff shall maintain complete and accurate records on each inmate. These records shall contain the same information as required for State prisoners that are housed in county local confinement facilities.

" § 153A-230.4. *Standards.*--The county satellite jail/work release units for misdemeanants shall not be subject to the standards promulgated for local confinement facilities pursuant to G.S. 153A-221.1. The Secretary of Human Resources shall develop and enforce standards for satellite jail/work release units. The Secretary shall take into consideration that they are to house only screened misdemeanants most of whom are on work release and therefore occupy the premises only in their off-work hours. After consultation with the North Carolina Sheriff's Association, the North Carolina Association of County Commissioners, and the Joint Legislative Commission on Governmental Operations, the Secretary of Human Resources shall promulgate standards suitable for these units by January 1, 1988, and shall include these units in the Department's monitoring and inspection responsibilities.

" § 153A-230.5. *Satellite jails/work release units built with non-State funds.*--(a) If a county is operating a satellite jail/work release unit prior to the enactment of this act, the county may apply to the Office of State Budget and Management for grant funds to recover any

verifiable construction or renovation costs for those units and for improvement funds except that the total for reimbursement and improvement shall not exceed one million five hundred thousand dollars (\$1,500,000). Any county accepting such a grant or any other State monies for county satellite jails must agree to all of the basic requirements listed in G.S. 153A-230.2 and G.S. 153A-230.3.

(b) If a county operates a non-State funded satellite jail/work release unit that does not comply with the basic requirements listed in G.S. 153A-230.2 and G.S. 153A-230.3, then the satellite jail shall be subject to the standards, rules, and regulations promulgated by the Secretary of Human Resources pursuant to Part 2 of Article 10 of Chapter 153A. Further, the male inmates who are serving a sentence of 30 days or more in these units shall be regarded as State prisoners and subject to the rules and regulations of the Department of Correction, which shall develop policies and procedures for their operation."

Sec. 2. G.S. 153A-217(5) is amended by inserting immediately before the period the phrase "except that it shall not include a county satellite jail/work release unit governed by Part 3 of Article 10 of Chapter 153A".

Sec. 3. G.S. 15A-1352(a) is amended by adding a new paragraph at the end to read:

"If a person is sentenced to imprisonment for a misdemeanor under this Article or for nonpayment of a fine under Article 84 of this Chapter, the sentencing judge shall make a finding of fact as to whether the person would be suitable for placement in a county satellite jail/work release unit operated pursuant to G.S. 153A-230.3. If the sentencing judge makes a finding of fact that the person would be suitable for placement in a county satellite jail/work release unit and the person meets the requirements listed in G.S. 153A-230.3 (a)(1), then the judge may order the misdemeanant to be placed in a county satellite jail/work release unit."

Sec. 4. This act shall become effective July 1, 1987, except that it shall not be construed to obligate the General Assembly to make any appropriation to implement its provisions, nor shall it be construed to obligate the State to make any grant for which no funds have been appropriated by the General Assembly.

In the General Assembly read three times and ratified this the 18th day of May, 1987.

H.B. 345

CHAPTER 208

AN ACT TO AUTHORIZE WILDLIFE PROTECTORS TO ENFORCE THE LITTERING LAW.

The General Assembly of North Carolina enacts:

Section 1. G.S. 14-399 is amended by adding a subsection (e) to read:

"(e) Wildlife protectors, as defined in G.S. 113-128(9), are authorized to enforce the provisions of this section."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 18th day of May, 1987.

H.B. 555

CHAPTER 209

AN ACT TO AUTHORIZE CURRITUCK COUNTY TO LEVY A ROOM OCCUPANCY AND TOURISM DEVELOPMENT TAX.

The General Assembly of North Carolina enacts:

Section 1. Occupancy tax. (a) Authorization and scope. The Currituck County Board of Commissioners may by resolution, after not less than 10 days' public notice and after a public hearing held pursuant thereto, levy a room occupancy tax of three percent (3%) of the gross receipts derived from the rental of any room, lodging, or similar accommodation furnished by a hotel, motel, inn, or similar place within the county that is subject to sales tax imposed by the State under G.S. 105-164.4(3), or from the rental of a campsite within the county. This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations when furnished in furtherance of their nonprofit purpose.

(b) Collection. Every operator of a business subject to the tax levied under this section shall, on and after the effective date of the levy of the tax, collect the tax. This tax shall be collected as part of the charge for furnishing a taxable accommodation. The tax shall be stated and charged separately from the sales records, and shall be paid by the purchaser to the operator of the business as trustee for and on account of the county. The tax shall be added to the sales price and shall be passed on to the purchaser instead of being borne by the operator of the business. The Currituck County Tax Collector shall design, print, and furnish to all appropriate businesses and persons in the county the necessary forms for filing returns and instructions to ensure the full collection of the tax. An operator of a business who collects the occupancy tax levied under this section may deduct from the amount remitted to the county a discount of three percent (3%) of the amount collected.

(c) Administration. The county shall administer a tax levied under this section. A tax levied under this section is due and payable to the county tax collector in monthly installments on or before the 15th day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the 15th day of each month, prepare and render a return on a form prescribed by the county. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied. A return filed with the county tax collector under this section is not a public record as defined by G.S. 132-1 and may not be disclosed except as required by law.

(d) Penalties. A person, firm, corporation, or association who fails or refuses to file the return required by this section shall pay a penalty of ten dollars (\$10.00) for each day's omission. In case of failure or refusal to file the return or pay the tax for a period of 30 days after the time required for filing the return or for paying the tax, there shall be an additional tax, as a penalty, of five percent (5%) of the tax due in addition to any other penalty, with an additional tax of five percent (5%) for each additional month or fraction thereof until the tax is paid.

Any person who willfully attempts in any manner to evade a tax imposed under this section or who willfully fails to pay the tax or make and file a return shall, in addition to all other penalties provided by law, be guilty of a misdemeanor and shall be punishable by a fine not to exceed one thousand dollars (\$1,000), imprisonment not to exceed six months, or both. The Board of Commissioners may, for good cause shown, compromise or forgive the penalties imposed by this subsection.

(e) Use of tax revenue. Currituck County shall use at least seventy-five percent (75%) of the net proceeds of the tax levied under this section only for tourist related purposes, including construction and maintenance of public facilities and buildings, garbage, refuse, and solid waste collection and disposal, police protection, and emergency services. The remainder of the net proceeds shall be deposited in the Currituck County General Fund and may be used for any lawful purpose. As used in this subsection, "net proceeds" means gross proceeds less the cost to the county of administering and collecting the tax, as determined by the finance officer.

(f) Effective date of levy. A tax levied under this section shall become effective on the date specified in the resolution levying the tax. That date must be the first day of a calendar month, however, and may not be earlier than the first day of the second month after the date the resolution is adopted.

(g) Repeal. A tax levied under this section may be repealed by a resolution adopted by the Currituck County Board of Commissioners. Repeal of a tax levied under this section shall become effective on the first day of a month and may not become effective until the end of the fiscal year in which the repeal resolution was adopted. Repeal of a tax levied under this section does not affect a liability for a tax that was attached before the effective date of the repeal, nor does it affect a right to a refund of a tax that accrued before the effective date of the repeal.

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 18th day of May, 1987.

H.B. 689

CHAPTER 210

AN ACT TO PROVIDE FOR RECIPROCITY LICENSING OF
NONRESIDENT BARBERS BY EXAMINATION IN CERTAIN
CIRCUMSTANCES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 86A-12 is amended as follows:

(1) in the first sentence, by inserting between the word "issue" and the phrase "a license to applicants" the phrase ",without examination,";

(2) by designating the first paragraph subsection (a), by designating the second paragraph subsection (c), and by inserting a new subsection between subsections (a) and (c) to read:

"(b) The requirements in subdivisions (1) or (5), or both, of subsection (a) of this section may be waived by the Board provided that the applicant presents evidence

satisfactory to the Board that the applicant:

(1) has met the licensure requirements of the state in which he received his license;

(2) has at least five years practical experience; and

(3) demonstrates his knowledge of barbering skills and of the sanitary regulations in North Carolina by passing a practical, written or oral examination."

Sec. 2. This act shall become effective October 1, 1987.

In the General Assembly read three times and ratified this the 18th day of May, 1987.

H.B. 796

CHAPTER 211

AN ACT TO ADD TWO ADDITIONAL LICENSED COSMETOLOGISTS TO THE STATE BOARD OF COSMETIC ART EXAMINERS TO BE APPOINTED BY THE GENERAL ASSEMBLY.

The General Assembly of North Carolina enacts:

Section 1. G.S. 88-13 reads as rewritten:

"§ 88-13. *State Board of Cosmetic Art Examiners created; appointment and qualifications of members; term of office; removal for cause.*--(a) The State Board of Cosmetic Art Examiners is established to consist of four members appointed by the Governor and two members appointed by the General Assembly on July 1, 1987. ~~Three~~ Five members shall be experienced, licensed cosmetologists who have practiced all branches of cosmetic art in this State for at least five years immediately preceding appointment to the Board. These members shall be free of any connection with any cosmetic art school, college, academy, or training school during their service on the Board. The other member shall be a person who is not licensed under this Chapter and who shall represent the interest of the public at large.

(b) Cosmetologist members of the Board shall serve staggered three-year terms. In order to establish a staggered term system, the terms of those members currently serving on the Board shall expire as follows: the term of the member having served the longest time on the Board shall expire on June 30, 1981; the term of the member having served the least time on the Board shall expire on June 30, 1983; and the term of the remaining cosmetologist member shall expire on June 30, 1982. Thereafter, all cosmetologist members shall serve three-year terms. One of the additional cosmetologist members added to the Board on July 1, 1987, shall be appointed by the General Assembly on the recommendation of the Lieutenant Governor in accordance with G.S. 120-121 and shall serve until June 30, 1990. The other additional cosmetologist member added to the Board on July 1, 1987, shall be appointed by the General Assembly on the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121 and shall serve until June 30, 1989.

The Governor shall appoint the public member not later than July 1, 1981, to serve a three-year term.

No Board member appointed on or after July 1, 1981, shall serve more than two complete consecutive three-year terms, except that each member shall serve until his successor is appointed and qualifies.

(c) The Governor may remove any member for good cause shown and may appoint members to fill unexpired terms of the members originally appointed by him. Vacancies in positions appointed by the General Assembly shall be filled in accordance with G.S. 120-122."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 18th day of May, 1987.

H.B. 952

CHAPTER 212

AN ACT TO PROVIDE THAT SUMS RECEIVED FOR SERVICES PERFORMED AS AN ELECTED OFFICIAL MAY NOT BE CONSIDERED IN DETERMINING THAT INDIVIDUAL'S EMPLOYMENT STATUS UNDER EMPLOYMENT SECURITY LAW.

The General Assembly of North Carolina enacts:

Section 1. G.S. 96-8(10)c. is amended by inserting "as an elected official who holds an elective office, as defined in G.S. 128-1.1(d), or" in the last sentence after "performed" and before "as".

Sec. 2 This act is effective upon ratification.

In the General Assembly read three times and ratified this the 18th day of May, 1987.

S.B. 26

CHAPTER 213**AN ACT TO CLARIFY THE PRIVILEGE LICENSE TAX ON PEDDLERS, ITINERANT MERCHANTS, AND FLEA MARKET OPERATORS.**

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-53 is rewritten to read:

"§ 105-53. Peddlers, itinerant merchants, and flea market operators--(a) Peddler. Every person engaged in business or employed as a peddler shall obtain a license from the Secretary of Revenue for the privilege of peddling goods and shall pay a tax for the license in the amount specified in this section. A 'peddler' is a person who travels from place to place with an inventory of goods, who sells the goods at retail or offers the goods for sale at retail, and who delivers the identical goods he carries with him. A peddler of only farm products shall pay a tax of twenty-five dollars (\$25.00) regardless of the number of counties in which he peddles goods. A peddler who travels from place to place on foot, selling goods other than or in addition to farm products, shall pay a tax of ten dollars (\$10.00) for each county in which he peddles goods. A peddler who travels from place to place by vehicle, selling goods other than or in addition to farm products, shall pay a tax of twenty-five dollars (\$25.00) for each county in which he peddles goods.

(b) Itinerant Merchant. Every person engaged in business as an itinerant merchant shall obtain a license from the Secretary of Revenue for the privilege of engaging in business and shall pay a tax for the license of one hundred dollars (\$100.00) for each county in which he is engaged in business. An 'itinerant merchant' is a merchant, other than a merchant with an established retail store in the county, who transports an inventory of goods to a building, vacant lot, or other location in a county and who, at that location, displays the goods for sale and sells the goods at retail or offers the goods for sale at retail. An itinerant merchant is not required to purchase a license under this subsection to sell goods or offer goods for sale at a flea market for which the operator has obtained a license under subsection (c). A merchant who sells goods, other than farm products, in a county for less than six consecutive months is considered an itinerant

merchant unless he stopped selling goods in that county because of his death or disablement, the insolvency of his business, or destruction of his inventory by fire or other catastrophe.

(c) **Flea Market Operator.** Every person engaged in business as a flea market operator shall obtain a license from the Secretary of Revenue for the privilege of engaging in business and shall pay a tax for the license of one hundred dollars (\$100.00) for each county in which he is engaged in business. A 'flea market operator' is a person who rents space, at a location other than a permanent retail store, to others for the purpose of selling goods at retail or offering goods for sale at retail.

(d) **Exemptions.** This section does not apply to the following:

- (1) Sales of farm and nursery products raised on premises owned or occupied by the seller of the products;
- (2) Sales of printed material, wood for fuel, ice, seafood, meat, poultry, livestock, eggs, dairy products, bread, cakes, or pies;
- (3) Sales of goods made by the seller of the goods; and
- (4) Sales by a person who maintains a fixed, permanent location from which he makes at least ninety percent (90%) of his sales, but who sells some goods in the county of his fixed location by peddling the goods.

(e) The board of county commissioners of any county in this State, upon proper application, may exempt from the annual license tax levied in this section disabled veterans of World War I, World War II, Korean Conflict, and Vietnam Era, who have been bona fide residents of this State for 12 or more months continuously, and widows with dependent children; and when so exempted, the board of county commissioners shall furnish such person or persons with a certificate of exemption, and such certificate shall entitle the holder thereof to peddle within the limits of the county without payment of any license tax to the State.

(f) **Person Defined.** As used in this section, 'person' has the same meaning as in G.S. 105-164.3(11).

(g) **Local License.** Counties and cities may levy a license tax on a business taxed under this section in an amount that does not exceed the State tax."

Sec. 2. Chapters 632 and 923 of the 1955 Session Laws are repealed.

Sec. 3. This act shall become effective July 1, 1987.

In the General Assembly read three times and ratified this the 19th day of May, 1987.

S.B. 554

CHAPTER 214

AN ACT TO ASSIST SMALL BUSINESS DEVELOPMENT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143B-431 reads as written:

" § 143B-431. *Department of Commerce; functions.*--The functions of the Department of Commerce, except as otherwise expressly provided by Article I of this Chapter or by the Constitution of North Carolina, shall include:

(1) All of the executive functions of the State in relation to economic development including by way of enumeration and not of limitation, the expansion and recruitment of environmentally sound industry, labor force development, the promotion and growth of the travel and tourism industries, the development of our State's ports, energy resource management and energy policy development;

(2) All functions, powers, duties and obligations heretofore vested in any agency enumerated in Article 15 of Chapter 143A, to wit:

- a. The State Board of Alcoholic Control,
- b. The North Carolina Utilities Commission,
- c. The Employment Security Commission,
- d. The North Carolina Industrial Commission,
- e. State Banking Commission and the Commissioner of Banks,
- f. Savings and Loan Association Division,
- g. The State Savings and Loan Commission,
- h. Credit Union Commission,
- i. The North Carolina Milk Commission,
- j. The North Carolina Mutual Burial Association Commission,
- k. The North Carolina Rural Electrification Authority.

- l. The North Carolina State Ports Authority,

all of which enumerated agencies are hereby expressly transferred by a Type II transfer, as defined by G.S. 143A-6, to this recreated and reconstituted Department of Commerce; and,

(3) All other functions, powers, duties and obligations as are conferred by this Chapter, delegated or assigned by the Governor and conferred by the Constitution and laws of this State. Any agency transferred to the Department of Commerce by a Type II transfer, as defined by G.S. 143A-6, shall have the authority to employ, direct and supervise professional and technical personnel, and such agencies shall not be accountable to the Secretary of Commerce in their

exercise of quasi-judicial powers authorized by statute, notwithstanding any other provisions of this Chapter, provided that the authority of the North Carolina State Ports Authority to employ, direct and supervise personnel shall be as provided in Part 10 of this Article.

The Department of Commerce is authorized to establish and provide for the operation of North Carolina nonprofit corporations to achieve the purpose of aiding the development of small businesses and to achieve the purposes of the United States Small Business Administration's 504 Certified Development Company Program."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 19th day of May, 1987.

H.B. 407

CHAPTER 215

AN ACT TO MAKE CERTAIN CHANGES IN THE NORTH CAROLINA CHILDHOOD VACCINE-RELATED INJURY COMPENSATION PROGRAM.

The General Assembly of North Carolina enacts:

Section 1. G.S. 130A-423 is amended in the catchline by inserting the phrase "*; relationship to federal law*" immediately before the period, and by adding the following new subsections to read:

"(c) Nothing in this Article prohibits any individual from bringing a civil action against a vaccine manufacturer for damages for a vaccine-related injury or death if the action is not barred by federal law under subtitle 2 of Title XXI of the Public Health Service Act.

(d) If any action is brought against a vaccine manufacturer as permitted by subtitle 2 of Title XXI of the Public Health Service Act and subsection (c) of this section, the plaintiff in the action may recover damages only to the extent permitted by subdivisions (1) through (3) of subsection (a) of G.S. 130A-427. The aggregate amount awarded in any such action may not exceed the limitation established by subsection (b) of G.S. 130A-427. Regardless of whether such an action is brought against a vaccine manufacturer, a claimant who has filed an election pursuant to Section 2121 of the Public Health Service Act, as enacted into federal law by Public Law 99-660, permitting such a claimant to file a civil action for damages for a vaccine-related injury or death, or who is otherwise permitted by federal law to file an action against a vaccine manufacturer, may file a petition pursuant to G.S. 130A-425 to obtain services from the Department of Human Resources pursuant to subdivision (5) of

subsection (a) of G.S. 130A-427 and, if no action has been brought against a vaccine manufacturer, to obtain other relief available pursuant to G.S. 130A-427.

(e) In order to prevent recovery of duplicate damages, or the imposition of duplicate liability, in the event that an individual seeks an award pursuant to G.S. 130A-427 and also files suit against the manufacturer as permitted by subtitle 2 of Title XXI of the Public Health Service Act and subsection (c) of this section, the following provisions shall apply:

- (1) If, at the time an award is made pursuant to G.S. 130A-427, an individual has already recovered damages from a manufacturer pursuant to a judgment or settlement, the award shall consist only of a commitment to provide services pursuant to subdivision (5) of subsection (a) of G.S. 130A-427.
- (2) If, at any time after an award is made to a claimant pursuant to G.S. 130A-427, an individual recovers damages for the same vaccine-related injury from a manufacturer pursuant to a judgment or settlement, the individual who recovers the damages shall reimburse the State for all amounts previously recovered from the State in the prior proceeding. Before a defendant in any action for a vaccine-related injury pays any amount to a plaintiff to discharge a judgment or settlement, he shall request from the Secretary of Human Resources a statement itemizing any reimbursement owed by the plaintiff pursuant to this subdivision, and, if the reimbursement is owed by the plaintiff, the defendant shall pay the reimbursable amounts, as determined by the Secretary, directly to the Department of Human Resources. This payment shall discharge the plaintiff's obligations to the State under this subdivision and any obligation the defendant may have to the plaintiff with respect to these amounts.
- (3) If:
 - a. an award has been made to a claimant for an element of damages pursuant to G.S. 130A-427; and
 - b. an individual has recovered for the same element of damages pursuant to a judgment in, or settlement of, an action for the same vaccine-related injury brought against a manufacturer, and that amount has not been remitted to the State pursuant to subdivision (2) of this subsection; and

c. the State seeks to recover the amounts it paid in an action it brings against the manufacturer pursuant to G.S. 130A-430;

any judgment obtained by the State under G.S. 130A-430 shall be reduced by the amount necessary to prevent the double recovery of any element of damages from the manufacturer. Nothing in this subdivision limits the State's right to obtain reimbursement from a claimant under subdivision (2) of this subsection with respect to any double payment that might be received by the claimant."

Sec. 2. G.S. 130A-423 is amended in the catchline by inserting "; subrogation" immediately before the period and by adding a new subsection at the end to read:

"(f) Subrogation claims pursued under the National Childhood Vaccine Injury Act of 1986 shall be filed with the appropriate court, not with the Industrial Commission."

Sec. 3. G.S. 130A-425(b) reads as rewritten:

"(b) In all claims filed pursuant to this Article, the claimant or the person in whose behalf the claim is made shall file with the Commission a verified petition in duplicate, setting forth the following information:

- (1) The name and address of the claimant;
- (2) The name and address of each respondent;
- (3) The amount of compensation in money and services sought to be recovered;
- (4) The time and place where the injury occurred;
- (5) A brief statement of the facts and circumstances surrounding the injury and giving rise to the ~~claim~~, claim; and
- (6) Supporting documentation and a statement of the claim that the claimant or the person in whose behalf the claim is made suffered a vaccine-related injury and has not previously collected an award or settlement of a civil action for damages for this injury. This supporting documentation shall include all available medical records pertaining to the alleged injury, including autopsy reports, if any, and if the injured person was under two years of age at the time of injury, all prenatal, obstetrical, and pediatric records of care preceding the injury, and an identification of any unavailable records known to the claimant or the person in whose behalf the claim is made.

Upon receipt of this verified petition in duplicate, the Commission shall enter the case upon its hearing docket and shall determine the matter in the county where the injury occurred unless the parties

agree or the Commission directs that the case may be heard in some other county. All parties shall be given reasonable notice of the date when and the place where the claim will be heard. Immediately upon receipt of the claim, the Commission shall serve a copy of the verified petition on each respondent by registered or certified mail. The Commission shall also send a copy of the verified petition to the Secretary of Human Resources, who shall be a party to all proceedings involving the claim, and to the Attorney General who shall represent the State's interest in all the proceedings involving the claim.

The Commission shall adopt rules necessary to govern the proceedings required by this Article. The Rules of Civil Procedure as contained in G.S. 1A-1 et seq. and the General Rules of Practice for the Superior and District Courts as authorized by G.S. 7A-34 apply to claims filed with the Industrial Commission under this Article. The Commission shall keep a record of all proceedings conducted under this Article, and has the right to subpoena any persons and records it considers necessary in making its determinations. The Commission may require all persons called as witnesses to testify under oath or affirmation, and any member of the Commission may administer oaths. If any persons ~~refuses~~ refuse to comply with any subpoena issued pursuant to this Article or to testify with respect to any matter relevant to proceedings conducted under this Article, the Superior Court of Wake County, on application of the Commission, may issue an order requiring the person to comply with the subpoena and to testify. Any failure to obey any such order may be punished by the court as for contempt."

Sec. 4. G.S. 130A-430(b) reads as rewritten:

"(b) Manufacturer. If the Industrial Commission makes an award for a claimant who it determines has sustained a vaccine-related injury, the State may, within two years of the date the Commission renders its decision, bring an action against the manufacturer who made the vaccine on the ground that the vaccine was a defective product. Damages in an action brought under this section are limited to the amount of the award made by the Commission plus the estimated present value of all the services to be provided to the claimant by the Department of Human Resources under G.S. 130A-427, the reasonable costs of prosecuting the action, including, but not limited to, attorneys fees, fees charged by witnesses, and costs of exhibits. For purposes of this subsection, a defective product is a covered vaccine that was manufactured, transported, or stored in a negligent manner, or was distributed after its expiration date, or that otherwise violated the applicable requirements of any license,

approval, or permit, or any applicable standards or requirements issued under Section 351 of the Public Health Service Act, as amended, or the federal Food, Drug, and Cosmetic Act, as these standards or requirements were interpreted or applied by the federal agency charged with their enforcement. The negligence or other action in violation of applicable federal standards or requirements shall be demonstrated by the State, by a preponderance of the evidence, to be the proximate cause of the injury for which an award was rendered pursuant to G.S. 130A-427, in order to allow recovery by the State against the manufacturer pursuant to this subsection."

Sec. 5. G.S. 130A-431 reads as rewritten:

"§ 130A-431. ~~Certain sales of vaccine diversions made misdemeanor felony.~~--A health care provider who receives a vaccine from the State and who gives or sells the vaccine to another, other than in the course of administering the vaccine, is guilty of a general misdemeanor. Any person who (i) receives a vaccine designated by the manufacturer for use in the State, (ii) directly or indirectly diverts the vaccine to a location outside the State, and (iii) directly or indirectly profits as a result of this diversion, is guilty of a Class J felony, punishable by imprisonment up to three years, or a fine, or both. The fine shall be twenty-five dollars (\$25.00) per dose of the diverted vaccine or one hundred thousand dollars (\$100,000), whichever is less. A health care professional convicted of a Class J felony pursuant to this section who is found by the court to have diverted more than 300 doses of covered vaccine shall have his license suspended for one year."

Sec. 6. G.S. 130A-432 reads as rewritten:

"§ 130A-432. *Scope.*--This Article applies to all claims for vaccine-related injuries occurring on and after October 1, 1986 and, at the option of the claimant, to claims for vaccine-related injuries that occurred before October 1, 1986 if such claim has not been resolved by final judgment or by settlement agreement or is not barred by a statute of limitations.

This Article applies ~~only to claims for vaccine-related injuries which occur in this State~~ to all claims for vaccine-related injuries alleged to have been caused by covered vaccines administered within the State, regardless of where an action relating to the injuries is brought and regardless of where the injuries are alleged to have occurred."

Sec. 7. G.S. 130A-433 reads as rewritten:

"§ 130A-433. *Contracts for purchase of vaccines; distribution; fee; rules.*--Notwithstanding any law to the contrary, the Secretary of Human Resources may enter into contracts with the manufacturers and suppliers of covered vaccines and with other public entities either

~~within or without the State for the purchase of covered vaccines and shall distribute or sell may provide for the distribution or sale of the covered vaccines to health care providers and facilities within the State.~~ Local health departments shall distribute the covered vaccines at the request of the Department of Human Resources. The Secretary may charge a fee for providing a covered vaccine to a health care provider. The fee shall be set at an amount that covers the cost of the vaccine to the Department, plus the cost to the Department of storing and distributing the vaccine. The Secretary shall adopt rules to implement this Article.

A health care provider who receives vaccine from the State may charge no more than the cost of the vaccine and a reasonable fee for the administration of the vaccine. Vaccines provided by the State to local health departments for administration shall be administered at no cost to the patient."

Sec. 8. Section 5 of Chapter 1008, 1985 Session Laws, Regular Session 1986, reads as rewritten:

"Sec. 5. This act shall become effective October 1, 1986, ~~and shall expire on October 1, 1989.~~"

Sec. 9. This act is effective upon ratification, except that Section 1 shall become effective only on and after the effective date of subtitle 2 of Title XXI of the Public Health Service Act, as enacted into federal law pursuant to Title III of Public Law 99-660, and only if this federal law on its effective date contains language that forbids a state from establishing or enforcing a law prohibiting an individual from bringing a civil action against a vaccine manufacturer for damages for a vaccine-related injury or death if this action is not barred by federal law.

In the General Assembly read three times and ratified this the 19th day of May, 1987.

S.B. 705

CHAPTER 216

AN ACT REQUIRING THE DEPARTMENT OF NATURAL RESOURCES AND COMMUNITY DEVELOPMENT TO STUDY THE FEASIBILITY OF DEVELOPING THE HIGHLANDS OF THE ROAN MOUNTAINS AS A STATE PARK.

The General Assembly of North Carolina enacts:

Section 1. The Department of Natural Resources and Community Development shall conduct a study to determine the feasibility and costs of developing the highlands of the Roan Mountains as a State Park.

Sec. 2. The Department of Natural Resources and Community Development shall report the results of this study to the 1987 General Assembly (Regular Session 1988).

Sec. 3. The Department of Natural Resources and Community Development shall perform this study with funds within its budget for the 1987-88 fiscal year.

Sec. 4. This act shall become effective July 1, 1987.

In the General Assembly read three times and ratified this the 20th day of May, 1987.

H.B. 246

CHAPTER 217

AN ACT TO INCREASE THE POPULATION CRITERION FOR COUNTIES THAT SEEK TO EXPAND COUNTY COMMISSIONERS' AUTHORITY OVER LOCAL BOARDS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 153A-77 is amended in the last sentence by deleting the number "400,000" and substituting the number "425,000".

Sec. 2. Section 2 of Chapter 754 of the 1985 Session Laws is rewritten to read: "This act is effective upon ratification."

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 20th day of May, 1987.

H.B. 284

CHAPTER 218

AN ACT TO ADD PROVISIONS TO THE RABIES CONTROL LAW CONCERNING POSSESSION AND SALE OF RABIES VACCINE.

The General Assembly of North Carolina enacts:

Section 1. Chapter 130A of the General Statutes is amended by adding a new section 130A-191 as follows:

"§ 130A-191. *Possession and distribution of rabies vaccine.*--It shall be unlawful for persons other than licensed veterinarians, certified rabies vaccinators and persons engaged in the distribution of rabies vaccine to possess rabies vaccine. Persons engaged in the distribution of vaccines may distribute, sell and offer to sell rabies vaccine only to

licensed veterinarians and certified rabies vaccinators."

Sec. 2. This act shall become effective October 1, 1987.

In the General Assembly read three times and ratified this the 20th day of May, 1987.

H.B. 323

CHAPTER 219

AN ACT TO REQUIRE THAT RABIES VACCINATION CLINICS BE OFFERED AT LEAST ANNUALLY RATHER THAN QUARTERLY.

The General Assembly of North Carolina enacts:

Section 1. G.S.130A-187 reads as rewritten:

"§ 130A-187. *County rabies vaccination* clinics.*--The local health director shall organize or assist other county departments to organize ~~quarterly~~ at least one countywide rabies vaccination clinics per year for the purpose of vaccinating dogs and cats. Public notice of the time and place of rabies vaccination clinics shall be published in a newspaper having general circulation within the area."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 20th day of May, 1987.

H.B. 567

CHAPTER 220

AN ACT TO AUTHORIZE THE MECKLENBURG COUNTY BOARD OF COMMISSIONERS TO WAIVE THE REQUIREMENT FOR BID DEPOSITS ON BIDS FOR EQUIPMENT AND MATERIAL.

The General Assembly of North Carolina enacts:

Section 1. The eighth paragraph of G.S. 143-129 is amended by adding a new sentence, at the end, to read:

"In the case of contracts for the purchase of apparatus, supplies, materials, or equipment in an amount less than one hundred thousand dollars (\$100,000), the Board or governing body may waive the requirement for bid deposits or bid bonds."

Sec. 2. This act applies to Mecklenburg County only.

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 21st day of May, 1987.

H.B. 643

CHAPTER 221

AN ACT TO PROVIDE FOR THE FILING OF HOUSING CODE NOTICES OR ORDERS IN THE NOTICE OF LIS PENDENS BY CERTAIN LOCAL GOVERNMENTS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 160A-443 is amended by adding a new subdivision to read:

"(7) That the complaint and notice issued pursuant to subdivision (2) or the order issued pursuant to subdivision (3) may be filed in the notice of *lis pendens* in the office of the Clerk of Superior Court of the county where the property is located. From the date of recording of such complaint and notice or order, it shall be binding upon the successors and assigns of the owner of the dwelling. The ordinance may authorize the public officer to cancel the notice of *lis pendens* in specified circumstances."

Sec. 2. This act applies only to the Cities of Asheville, Brevard, Charlotte, Greensboro, and Hendersonville, and the Counties of Buncombe and Transylvania.

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 21st day of May, 1987.

H.B. 659

CHAPTER 222

AN ACT TO PERMIT CUMBERLAND COUNTY TO USE UNMARKED COUNTY VEHICLES FOR DELIVERY OF CERTAIN HUMAN SERVICES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 14-250 is amended in the first paragraph by inserting between the fourth and fifth sentences a new sentence to read:

"Provided, further, that no vehicle used by any county officer or official for the purpose of delivering services to or transporting patients or clients of residential treatment centers, group and foster care homes, victims of rape or other physical abuse, or conducting investigations of child and other physical abuse, communicable diseases or conditions, or other similar sensitive and private matters shall be required to be marked."

Sec. 2. This act applies only to Cumberland County.

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 21st day of May, 1987.

H.B. 665

CHAPTER 223

AN ACT TO AMEND THE CHARTER OF THE CITY OF HIGH
POINT RELATING TO THE MAYOR PRO TEMPORE.

The General Assembly of North Carolina enacts:

Section 1. Section 2.4 of the Charter of the City of High Point, being Chapter 501, Session Laws of 1979, is rewritten to read:

"Sec. 2.4. Mayor Pro Tempore. At its organizational meeting, the council shall elect from among the two candidates elected to the council at large a mayor pro tempore to exercise the functions of mayor whenever the mayor is absent, disabled or unable to discharge the duties of the office of mayor."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 21st day of May, 1987.

H.B. 690

CHAPTER 224

AN ACT AUTHORIZING THE CITY OF DURHAM TO ENFORCE
BUILDING AND HOUSING ORDINANCES IN ANY MANNER
PRESCRIBED FOR THE ENFORCEMENT OF GENERAL
ORDINANCES OF THE CITY.

The General Assembly of North Carolina enacts:

Section 1. The Charter of the City of Durham, being Chapter 671, 1975 Session Laws, as amended, is further amended by adding thereto a new section to read:

"Sec. 102.1. Additional Building and Housing Code Remedies. In addition to any other remedy provided by law, the city council shall have the power to impose fines and penalties and take any other action authorized by G.S. 160A-175 in adopting, amending or enforcing any ordinance authorized by Parts 5 or 6 of Article 19, Chapter 160A of the General Statutes of North Carolina provided however, violation of any such ordinance shall not constitute a misdemeanor or infraction pursuant to G.S. 160A-175(b)."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 21st day of May, 1987.

H.B. 891

CHAPTER 225

AN ACT TO INCREASE THE FINE FOR UNAUTHORIZED PARKING IN A HANDICAPPED PARKING SPACE IN CHARLOTTE.

*The General Assembly of North Carolina enacts:***Section 1.** G.S. 20-37.6(f)(1) reads as rewritten:

"(1) A violation of G.S. 20-37.6(e)(1), (2) or (3) is an infraction which carries a penalty of ~~twenty-five dollars (\$25.00)~~ fifty dollars (\$50.00) and whenever evidence shall be presented in any court of the fact that any automobile, truck, or other vehicle was found to be parked in a properly designated handicapped parking space in violation of the provisions of this section, it shall be prima facie evidence in any court in the State of North Carolina that the vehicle was parked and left in the space by the person, firm, or corporation in whose name the vehicle is registered and licensed according to the records of the Division of Motor Vehicles. No evidence tendered or presented under this authorization shall be admissible or competent in any respect in any court or tribunal except in cases concerned solely with a violation of this section."

Sec. 2. This act applies only to the City of Charlotte.**Sec. 3.** This act shall become effective October 1, 1987.

In the General Assembly read three times and ratified this the 21st day of May, 1987.

H.B. 914

CHAPTER 226

AN ACT ENABLING THE TOWNS OF BOONE AND BLOWING ROCK TO PASS ORDINANCES TO REQUIRE THAT CERTAIN RENTAL RESIDENTIAL DWELLING UNITS HAVE AUTOMATIC SMOKE DETECTORS.

The General Assembly of North Carolina enacts:

Section 1. Notwithstanding any provision of the North Carolina State Building Code or any law to the contrary, and after a public hearing by the town governing board, a town may provide, by ordinance, that the owners of existing rental residential dwelling units that are:

(1) a structure with one or two dwelling units that is not owner occupied; or

(2) a structure with three or more dwelling units whose units are not required to have smoke detectors under the State Building Code;

shall install battery operated smoke detectors in such units within 90 days after the effective date of such ordinance.

Sec. 2. This act shall apply only to the Towns of Boone and Blowing Rock.

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 21st day of May, 1987.

S.B. 433

CHAPTER 227

AN ACT TO MODIFY THE NORTH CAROLINA STATE
EDUCATION ASSISTANCE AUTHORITY.

The General Assembly of North Carolina enacts:

Section 1. G.S. 116-201(a) reads as rewritten:

"(a) The purpose of this Article is to authorize a system of financial assistance, consisting of grants, loans, work-study or other employment, and other aids, ~~for qualified residents of the State to assist qualified students to enable them to obtain an education beyond the high school level by attending public or private educational institutions. The General Assembly has found and hereby declares that it is in the public interest and essential to the welfare and well-being of the inhabitants of the State and to the proper growth and development of the State to foster and provide financial assistance to residents of the State, to properly qualified therefor, students in order to help them to obtain an education beyond the high school level. The General Assembly has further found that many residents of the State students who are fully qualified to enroll in appropriate educational institutions for furthering their education beyond the high school level lack the financial means and are unable, without financial assistance as authorized under this Article, to pay the cost of such education, with a consequent irreparable loss to the State of valuable talents vital to its welfare. The General Assembly has determined that the establishment of a proper system of financial assistance for such objective purpose serves a public purpose and is fully consistent with the long established policy of the State to encourage, promote and assist the education of the people of the State to enhance economic development."~~

Sec. 2. G.S. 116-201(b) reads as rewritten:

"(b) As used in this Article, the following terms shall have the following meanings unless the context indicates a contrary intent:

- (1) 'Article' or 'this Article' means this Article 23 of the General Statutes of North Carolina, presently comprising

G.S. 116-201 through ~~116-109.23~~ [~~116-209.23~~] 116-209.24;

- (2) 'Authority' means the State Education Assistance Authority created by this Article or, if the Authority is abolished, the board, body, commission or agency succeeding to its principal functions, or on whom the powers given by this Article to the Authority shall be conferred by law;
- (3) 'Bond resolution' or 'resolution' when used in relation to the issuance of bonds is deemed to mean either any resolution authorizing the issuance of bonds or any trust agreement or other instrument securing any bonds;
- (4) 'Bonds' or 'revenue bonds' means the obligations authorized to be issued by the Authority under this Article, which may consist of revenue bonds, revenue refunding bonds, bond anticipation notes and other notes and obligations, evidencing the Authority's obligation to repay borrowed money from revenues, funds and other money pledged or made available therefor by the Authority under this Article;
- (5) 'Eligible institution,' with respect to student loans, has the same meaning as the term has in section 1085 of Title 20 of the United States Code;
- (6) 'Eligible institution,' with respect to grants and work-study programs, includes the constituent institutions of The University of North Carolina, all state-supported institutions organized and administered pursuant to Chapter 115A of the General Statutes and all private institutions as defined in subdivision (8) of this subsection;
- (7) 'Student obligations' means student loan notes and other debt obligations evidencing loans to students which the Authority may make, take, acquire, buy, sell, endorse or guarantee under the provisions of this Article, and may include any direct or indirect interest in the whole or any part of any such notes or obligations;
- (8) 'Private institution' means an institution other than a seminary, Bible school, Bible college or similar religious institution in this State that is not owned or operated by the State or any agency or political subdivision thereof, or by any combination thereof, that offers post-high school education and is accredited by the Southern Association of Colleges and Schools or, in the case of institutions that are not eligible to be considered for

accreditation, accredited in those categories and by those nationally recognized accrediting agencies that the Authority may designate;

- (9) 'Reserve Trust Fund' means the trust fund authorized under G.S. 116-209 of this Article;
- (10) 'State Education Assistance Authority Loan Fund' means the trust fund so designated and authorized by G.S. 116-209.3 of this Article;
- (11) 'Student', with respect to scholarships, grants, and work-study programs, means a resident of the State, in accordance with definitions of residency that may from time to time be prescribed by the Board of Governors of The University of North Carolina and published in the residency manual of the Board, who, under regulations adopted by the Authority, has enrolled or will enroll in an eligible institution for the purpose of pursuing his education beyond the high school level, who is making suitable progress in his education in accordance with standards acceptable to the Authority and, for the purposes of G.S. 116-209.19, who has not received a bachelor's degree, or qualified for it and who is otherwise classified as an undergraduate under those regulations that the Authority may promulgate; and
- (12) 'Student', with respect to loans, means a resident of the State as defined in (11) of this subsection and an eligible student as defined in 20 U.S.C. 1071 who is enrolled in an eligible institution located in North Carolina; and
- (1213) 'Student loans' means loans to residents of this State to students defined in subdivisions (11) and (12) of this subsection to aid them in pursuing their education beyond the high school level."

Sec. 3. G.S. 116-202 reads as rewritten:

"§ 116-202. *Authority may buy and sell students' obligations; undertakings of Authority limited to revenues.*--In order to facilitate the vocational and college education of residents of this State and to promote the industrial and economic development of the State, the State Education Assistance Authority (hereinafter created) is hereby authorized and empowered to buy and sell obligations of students attending institutions of higher education or post-secondary business, trade, technical, and other vocational schools, which obligations represent loans made to such students for the purpose of obtaining training or education.

No bonds, as this term is defined in this Article, are deemed to constitute a debt of the State, or of any political subdivision thereof or a pledge of the faith and credit of the State or of any political subdivision, but are payable solely from the funds of the Authority. All bonds shall contain on their faces a statement to the effect that neither the State nor the Authority is obligated to pay the same or the interest thereon except from revenues of the Authority and that neither the faith and credit nor the taxing power of the State or of any political subdivision is pledged to the payment of the principal of or the interest on the bonds.

All expenses incurred in carrying out the provisions of this Article shall be payable solely from funds provided under the provisions of this Article and no liability or obligation shall be incurred by the Authority hereunder beyond the extent to which moneys shall have been provided under the provisions of this Article."

Sec. 4. G.S. 116-206 reads as rewritten:

" § 116-206. *Acquisition of obligations.*--With the proceeds of bonds or any other funds of the Authority available therefor, the Authority may acquire from any bank, insurance company, ~~or other or educational~~ lending institution, eligible student obligations, or any interest or participation therein in such amount, at such price or prices and upon such terms and conditions as the Authority shall determine to be in the public interest and desirable to carry out the purposes of this Article. The Authority shall take such actions and require the execution of such instruments deemed appropriate by it to permit the recovery, in connection with any such obligations or any interest or participation therein acquired by the Authority, of the amount to which the Authority may be rightfully entitled, and otherwise to enforce and protect its rights and interest thereto."

Sec. 5. G.S. 116-209 reads as rewritten:

" § 116-209. *Reserve Trust Fund created; transfer of Escheat Fund; pledge of security interest for payment of bonds; administration.*--The appropriation made to the Authority under this Article shall be used exclusively for the purpose of acquiring contingent or vested rights in obligations which it may acquire under this Article; such appropriations, payments, revenue and interest as well as other income received in connection with such obligations is hereby established as a trust fund. Such fund shall be used for the purposes of the Authority other than maintenance and operation.

The maintenance and operating expenses of the Authority shall be paid from funds specifically appropriated for such purposes. No part of the trust fund established under this section shall be expended for

such purposes.

The State Treasurer shall be the custodian of the assets of the Authority and shall invest them in accordance with the provisions of G.S. 147-69.2 and 147-69.3. All payments from the accounts thereof shall be made by him issued upon vouchers signed by such persons as are designated by the Authority. A duly attested copy of a resolution of the Authority designating such persons and bearing on its face the specimen signatures of such persons shall be filed with the State Treasurer as his authority for issuing warrants upon such vouchers.

The trust fund is designated 'Reserve Trust Fund' and shall be maintained by the Authority, except as otherwise provided, pursuant to the provisions of this Article, as security for or insurance respecting any bonds or other obligations issued by the Authority under this Article. The corpus of the Escheat Fund, including all future additions other than the income, are transferred to, and become, a part of the Reserve Trust Fund and shall be accounted for, administered, invested, reinvested, used and applied as provided in ~~G.S. 116A-8, 116A-9 and 116A-10~~ Chapter 116B of the General Statutes. The Authority may pledge and vest a security interest in all or any part of the Reserve Trust Fund by resolution adopted or trust agreement approved by it as security for or insurance respecting the payment of bonds or other obligations issued under this Article. The Reserve Trust Fund shall be held, administered, invested, reinvested, used and applied as provided in any resolution adopted or trust agreement approved by the Authority, subject to the provisions of this Article and ~~G.S. 116A-8 through 116A-11~~ Chapter 116B of the General Statutes."

Sec. 6. G.S. 116-209.3 reads as rewritten:

"§ 116-209.3. *Additional powers.*--The Authority is authorized to develop and administer programs and perform all functions necessary or convenient to promote and facilitate the making and insuring of student loans and providing such other student loan assistance and services as the Authority shall deem necessary or desirable for carrying out the purposes of this Article and for qualifying for loans, grants, insurance and other benefits and assistance under any program of the United States now or hereafter authorized fostering student loans. There shall be established and maintained a trust fund which shall be designated 'State Education Assistance Authority Loan Fund' (the 'Loan Fund') which may be used by the Authority in making student loans directly or through agents or independent contractors, insuring student loans, acquiring, purchasing, endorsing or guaranteeing promissory notes, contracts, obligations or other legal

instruments evidencing student loans made by banks, educational institutions, nonprofit corporations or other eligible lenders, and for defraying the expenses of operation and administration of the Authority for which other funds are not available to the Authority. There shall be deposited to the credit of such Loan Fund the proceeds (exclusive of accrued interest) derived from the sale of its revenue bonds by the Authority and any other moneys made available to the Authority for the making or insuring of student loans or the purchase of obligations. There shall also be deposited to the credit of the Loan Fund surplus funds from time to time transferred by the Authority from the sinking fund. Such Loan Fund shall be maintained as a revolving fund. There is also deposited to the credit of the Loan Fund the income derived from the investment or deposit of the Escheat Fund distributed to the Authority pursuant to ~~G.S. 116A-9~~ G.S. 116B-37. The income shall be held, administered and applied by the Authority as provided in any resolution adopted or trust agreement approved by the Authority, subject to the provisions of ~~G.S. 116A-9~~ Chapter 116B of the General Statutes and this Article.

In lieu of or in addition to the Loan Fund, the Authority may provide in any resolution authorizing the issuance of bonds or any trust agreement securing such bonds that any other trust funds or accounts may be established as may be deemed necessary or convenient for securing the bonds or for making student loans, acquiring obligations or otherwise carrying out its other powers under this Article, and there may be deposited to the credit of any such fund or account proceeds of bonds or other money available to the Authority for the purposes to be served by such fund or account."

Sec. 7. G.S. 116-209.17 reads as rewritten:

"§ 116-209.17. *Establishment of student assistance program.*--The Authority is authorized, in addition to all other powers and duties vested or imposed under this Article, to establish and administer a statewide student assistance program for the purpose of removing, insofar as may be possible, the financial barriers to education beyond the high school level for eligible needy North Carolina undergraduate students at public or private institutions in this State and, with respect to loans, public, and private institutions located elsewhere. This objective shall be accomplished, consistent with Federal law or regulation, through a comprehensive program under which the financial ability of each student and of his family, under standards prescribed by the Authority, is measured against the reasonable costs, as determined by the Authority, of the educational program which the student proposes to pursue. Needs of students for financial assistance shall, to the extent of the availability of funds from federal, State,

institutional or other sources, be met through work-study programs, loans, grants and out-of-term employment, or a combination of these forms of assistance. With respect to grants made pursuant to this Article, no student is eligible to receive benefits under this student assistance program for a total of more than 45 months of full-time, post-high school level education."

Sec. 8. G.S. 116-209.19 reads as rewritten:

"§ 116-209.19. *Grants to students.*--The Authority is authorized to make grants to eligible students enrolled or to be enrolled in eligible institutions in North Carolina out of such money as from time to time may be appropriated by the State or as may otherwise be available to the Authority for such grants. The Authority, subject to the provisions of this Article and any applicable appropriation act, shall adopt rules, regulations and procedures for determining the needs of the respective students for grants and for the purpose of making such grants. The amount of any grant made by the Authority to any student, whether enrolled or to be enrolled in any private institution or any tax-supported public institution, shall be determined by the Authority upon the basis of substantially similar standards and guides that shall be set forth in the Authority's rules, regulations and procedures; provided, however, that grants made in any fiscal year to students enrolled or to be enrolled in private institutions may be increased to compensate, in whole or in part, for the average annual State appropriated tuition subsidy for such fiscal year, determined as provided herein. The average annual State appropriated subsidy for each fiscal year shall be determined by the Secretary of Administration, after consultation with the Board of Governors of The University of North Carolina and the Authority, for each of the two categories of tax-supported institutions, being (i) institutions, presently 16, that provide education of the collegiate grade and grant baccalaureate degrees and (ii) institutions, such as community colleges and technical institutes created and existing under Chapter 115A of the General Statutes. The average annual State appropriated subsidy for each of such two categories of institutions shall mean the amount of the total appropriations of the State for the respective fiscal years under the current operations budgets, pursuant to the Executive Budget Act reasonably allocable to undergraduate students enrolled in such institutions exclusive of the Division of Health Affairs of The University of North Carolina and the North Carolina School of the Arts for all institutions in such category, all as shall be determined by the Secretary of Administration after consultation as above provided, divided by the budgeted number of North Carolina undergraduate

students to be enrolled in such fiscal year.

The Authority, in determining the needs of students for grants, may among other factors, give consideration to the amount of other financial assistance that may be available to the students, such as nonrepayable awards under the ~~Basic Educational Opportunity Grant Program~~ Pell Grant Program, the Health Professions Education Assistance Act or other student assistance programs created by federal law.

Prior to taking any action under this subsection, the Secretary of Administration may consult with the Advisory Budget Commission."

Sec. 9. G.S. 116-209.24 reads as rewritten:

"§ 116-209.24. *Parental loans.*--(a) Policy. The General Assembly of North Carolina hereby finds and declares that the making and insuring of loans to the eligible parents of ~~resident~~ students is fully consistent with and furthers the long established policy of the State to encourage, promote and assist the education of the people of the State as more fully set forth in G.S. 116-201(a).

(b) Definitions. As used in this section, the following terms shall have the following meanings:

- (1) 'Obligations', 'student obligations', or 'student loan obligations' as defined under G.S. 116-201(b)(7) includes, unless the context indicates a contrary intent, parental obligations.
- (2) 'Parent' means a student's mother, father, adoptive parent, or legal guardian of the student if such guardian is required by court order to use his or her own financial resources to support that student.
- (3) 'Parental loans' means loans made or guaranteed by the Authority to a parent of an eligible student.
- (4) 'Parental obligations' means obligations evidencing loans made pursuant to subsection (c) of this section.
- ~~(5) 'Resident student' means a student deemed by appropriate officials to qualify for the in-state tuition rate under some provision of G.S. 116-143.1.~~
- (65) 'Student loans' includes, unless the context indicates a contrary intent, parental loans.

(c) Parental Assistance. The Authority is authorized to develop and administer programs and perform all functions necessary or convenient to promote and facilitate the making and insuring of loans to parents of ~~resident~~ students in order to facilitate the vocational and college education of such students who are enrolled or to be enrolled in eligible institutions. The Authority is also authorized to provide

such other services and loan assistance to parents of ~~resident~~ students as the Authority shall deem necessary or desirable for carrying out the purpose of this section and for qualifying for loans, grants, insurance, and other benefits and assistance under any program of the United States now or hereafter authorized fostering loans to eligible parents of ~~resident~~ students.

(d) Authorization to Buy and Sell Parental Obligations. The Authority is hereby authorized and empowered to buy and sell parental obligations.

(e) Authorization to Issue Bonds. The Authority is hereby authorized to provide for the issuance, at one time or from time to time, of bonds or revenue bonds, as such terms are defined in G.S. 116-201(4), in conformity with provisions of this section."

Sec. 10. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 22nd day of May, 1987.

S.B. 736

CHAPTER 228

AN ACT TO PROVIDE FOR FOUR-YEAR TERMS FOR MEMBERS OF THE BOARD OF GOVERNORS OF THE UNIVERSITY OF NORTH CAROLINA, AND BEGINNING IN 1989 PROVIDING THAT NO MEMBER MAY BE RE-ELECTED TO THAT BOARD AFTER 12 CONSECUTIVE YEARS OF SERVICE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 116-6 reads as rewritten:

" § 116-6. *Election and terms of members of Board of Governors.*--(a) As the terms of members of the Board of Governors provided for in G.S. 116-5 expire, their successors shall be elected by the Senate and House of Representatives. Eight members shall be so elected at the regular legislative session in ~~1973 and every two years thereafter~~ 1987 and 1989, and 16 members shall be so elected at the regular legislative session in 1991 and every two years thereafter.

(b) All terms shall commence on July 1 of odd-numbered years and all members shall serve for eight-year overlapping terms, except that beginning with members elected in 1987, all members shall serve for four-year overlapping terms.

(c) ~~No member may be elected to more than two full terms in succession.~~ Beginning with elections in 1989, no person may be elected to:

(1) more than three full four-year terms in succession;

- (2) a four-year term if preceded immediately by election to two full eight-year terms in succession; or
- (3) a four-year term if preceded immediately by election to an eight-year term and a four year-term in succession.

Resignation from a term of office does not constitute a break in service for the purpose of this subsection. Service prior to the beginning of those terms in 1989 shall be included in the limitations.

(d) The Senate and House of Representatives, in electing members of the Board of Governors, shall select from a slate of nominees made in a joint session of the General Assembly. There shall be nominated from the floor at least twice the number of persons as there are vacancies to be filled. The Senate and the House of Representatives shall elect one half of the persons necessary to fill the vacancies, with the Senate to hold its election prior to the House of Representatives. In the event that an odd number of members are to be elected, the House of Representatives shall select the additional nominee. In 1973 and every four years thereafter through 1989, the Senate shall elect at least one woman and one member of a minority race and the House of Representatives shall elect at least one member of the political party to which the largest minority of the members of the General Assembly belong. In 1975 and every four years thereafter through 1987, the Senate shall elect at least one member of the political party to which the largest minority of the members of the General Assembly belong and the House of Representatives shall elect at least one woman and one member of a minority race. In 1991 and every four years thereafter the Senate shall elect at least two members of the political party to which the largest minority of the members of the General Assembly belong and the House of Representatives shall elect at least two women and two members of a minority race. In 1993 and every four years thereafter the Senate shall elect at least two women and two members of a minority race and the House of Representatives shall elect at least two members of the political party to which the largest minority of the members of the General Assembly belong. In 1989 and biennially thereafter, these elections shall be held during the first 30 legislative days of the regular session.

(e) Of the eight members elected every two years through 1989, at least one shall be a woman, at least one other member shall be a member of a minority race, and at least one other member shall be a member of the political party to which the largest minority of the members of the General Assembly belong. Of the 16 members elected every two years beginning in 1991, at least two shall be women, at least two other members shall be members of a minority race, and at least two other members shall be members of the political

party to which the largest minority of the members of the General Assembly belong. In subsequent elections to the Board, the General Assembly shall maintain at least these minimum proportions among the members of the Board.

(f) Effective July 1, 1987, and thereafter, any person who has not attained the age of 70 years, and who has served at least one full term as chairman of the Board of Governors shall be a member *emeritus* of the Board of Governors. Members *emeriti* have all the rights and privileges of membership except they do not have a vote."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 22nd day of May, 1987.

H.B. 510

CHAPTER 229

AN ACT CONCERNING INTENSIVE REMEDIAL SUMMER
SCHOOL PROGRAMS AND RELATED TRANSPORTATION IN
THE LOCAL SCHOOL ADMINISTRATIVE UNITS.

The General Assembly of North Carolina enacts:

Section 1. The State Board of Education shall use funds available to it to provide intensive remedial summer school programs and related transportation in the local school administrative units in grades 1 through 4, 6, and 8 for the summer of 1987 and in grades 1 through 11 for the summer of 1988. It is the intent of the General Assembly that, where practical, the local school administrative units cooperate to provide joint summer school programs in an efficient and effective manner.

The State Board of Education shall adopt rules for the allotment and use of summer remediation funds on an equitable basis. In accordance with the Basic Education Program, first priority for the use of these funds shall be the provision of a remedial summer program to students in grades 3, 6, and 8 who fail to meet State promotion standards. Second priority shall be students in the grades funded who fail to meet local standards. Third priority shall be other students in the grades funded who, in the judgment of local boards of education, need remedial instruction.

The summer school session in each local school administrative unit shall be a minimum of four weeks long and a maximum of six weeks long.

In order to allow local boards of education to plan their remedial summer programs effectively, funds available for remedial summer school programs may be carried over to the succeeding fiscal year.

Sec. 2. Nothing herein contained shall be construed to obligate the General Assembly to make additional appropriations to implement the provisions of this act.

Sec. 3. This act shall become effective upon ratification, and applies to remedial summer school programs for the summer of 1987.

In the General Assembly read three times and ratified this the 22nd day of May, 1987.

H.B. 630

CHAPTER 230

AN ACT TO AMEND CHAPTER 745 OF THE 1965 SESSION LAWS AS IT PERTAINS TO THE REDISTRIBUTION OF ABC PROFITS FOR THE TOWN OF BLOWING ROCK.

The General Assembly of North Carolina enacts:

Section 1. Section 6 of Chapter 745 of the 1965 Session Laws is rewritten to read:

"Sec. 6. Revenue received from the sales of alcoholic beverages or from sales of spirituous liquor to mixed beverages permittees for liquor by the drink sales shall be distributed in accordance with G.S. 18B-805."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 22nd day of May, 1987.

H.B. 632

CHAPTER 231

AN ACT TO PROHIBIT HUNTING IN ANSON COUNTY WITHOUT THE WRITTEN PERMISSION OF THE LANDOWNER, TO REGULATE DEER HUNTING SEASON IN ANSON COUNTY, TO PROHIBIT HUNTING FROM THE RIGHT-OF-WAY OF A PUBLIC ROAD, AND TO REQUIRE OWNER IDENTIFICATION ON DOGS USED TO HUNT DEER IN ANSON COUNTY.

The General Assembly of North Carolina enacts:

Section 1. It is unlawful to hunt on the land of another unless the hunter has, on his person, a writing signed and dated by the owner or lessee of the land granting the hunter permission to hunt on said land. If the land is owned or leased by a club, the president of the club shall issue the permission to hunt. Unless otherwise specified in the writing, the written permission shall be valid for one year. The written permission shall be displayed upon request to any

law enforcement officer with authority to enforce this act.

For the purposes of this section, a hunter not physically present on another person's land shall be considered to be hunting on such land if, during the season for hunting deer with firearms, the person allows a dog under his ownership, possession, or control to run upon or cross another person's land to hunt deer.

For the purposes of this act, the term "to hunt" has the same meaning as under G.S. 113-130(5a).

Sec. 2. It is unlawful to hunt at any time on, from, or across any public road or highway.

Sec. 3. Notwithstanding the provisions of G.S. 113-291.2 and regulations issued pursuant thereto, the season for hunting deer with firearms in Anson County shall last seven weeks. During the season for hunting deer with firearms in Anson County, deer may be hunted with the aid of dogs only during the last five weeks of the season, subject to the restrictions of G.S. 113-291.5(b) and the regulations issued pursuant thereto.

Sec. 4. It is unlawful to hunt deer with the aid of dogs unless each dog bears a collar, tag, or other identification showing its owner's full name and address. The provisions of this section shall not apply to a landowner or his children while hunting on the landowner's property.

Sec. 5. Each person violating the provisions of Section 1 of this act shall be fined as follows:

(a) for hunting deer with the aid of dogs in violation of Section 1, a person shall be fined on the first conviction thereof not less than three hundred dollars (\$300.00) nor more than five hundred dollars (\$500.00), and upon a second or subsequent conviction thereof, the offender shall be fined not less than five hundred dollars (\$500.00) nor more than seven hundred dollars (\$700.00), or imprisoned not more than 60 days, or both, at the discretion of the court; and

(b) for hunting deer without the aid of dogs, or for hunting any other animal or bird with or without the aid of dogs, in violation of Section 1, a person shall be fined on the first conviction thereof not less than ten dollars (\$10.00) nor more than fifty dollars (\$50.00), and upon a second or subsequent conviction thereof, the offender shall be fined not less than fifty dollars (\$50.00) nor more than one hundred dollars (\$100.00), or imprisoned not more than 60 days, or both, at the discretion of the court.

Sec. 6. Each person violating the provisions of Section 2 of this act shall be fined on the first conviction thereof not less than three hundred dollars (\$300.00) nor more than five hundred dollars

(\$500.00), and upon a second or subsequent conviction thereof, the offender shall be fined not less than five hundred dollars (\$500.00) nor more than seven hundred dollars (\$700.00), or imprisoned not more than 60 days, or both, at the discretion of the court.

Sec. 7. This act is enforceable by law enforcement officers of the Wildlife Resources Commission, by sheriffs and deputy sheriffs, and by other peace officers with general subject matter jurisdiction.

Sec. 8. Chapter 1319 of the 1973 Session Laws (1974 Reg. Sess.) is amended by deleting from Section 4 the phrase "Anson,".

Sec. 9. This act applies only to Anson County.

Sec. 10. This act shall become effective October 1, 1987.

In the General Assembly read three times and ratified this the 22nd day of May, 1987.

H.B. 694

CHAPTER 232

AN ACT AMENDING THE CHARTER OF THE CITY OF DURHAM TO PERMIT THE SALE OR OTHER TRANSFER OF PROPERTY SUBJECT TO CERTAIN CONDITIONS AND RESTRICTIONS.

The General Assembly of North Carolina enacts:

Section 1. The Charter of the City of Durham, being Chapter 671, 1975 Session Laws, as amended, is further amended, by adding the following new section:

"Sec. 86.1. Sale of Property subject to restrictions. (a) The city council may sell, exchange, or otherwise transfer the fee or any lesser interest in real property to any purchaser subject to such covenants, conditions and restrictions as the city council may deem to be in the public interest. Such sale, exchange or other transfer may be made pursuant to either (i) Section 86 of this Charter, (ii) Article 12 of Chapter 160A of the North Carolina General Statutes, (iii) G.S. 160A-514 or (iv) any other applicable provision of law, and the consideration received by the city, if any, for such sale, exchange or transfer may reflect the restricted use of the property resulting from such covenants, conditions and restrictions. The city may invite bids or written proposals (including detailed development plans and site plans) for the purchase of any such property or property interest (whether by sale, exchange or other transfer) pursuant to such specifications as may be approved by the city. A sale, exchange or other transfer of real property (or interest therein) pursuant to this

section may be made contingent upon any necessary rezoning of such property.

(b) The authority contained in this section is in addition to and not in limitation of any other authority granted by this Charter or any other law."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 22nd day of May, 1987.

H.B. 738

CHAPTER 233

AN ACT TO AUTHORIZE ORANGE COUNTY AND MUNICIPALITIES IN THAT COUNTY TO ENGAGE IN JOINT PLANNING PROGRAMS AND TO ENTER INTO ANNEXATION AGREEMENTS.

The General Assembly of North Carolina enacts:

Section 1. Article 19 of Chapter 160A of the General Statutes is amended to add a new section to read:

"§ 160A-360.1. *Joint Planning.*--(a) A city and a county may agree that, within a mutually agreed upon geographical area (hereinafter, the 'joint planning area') all of the powers granted by this Article, including without limitation powers involving the exercise of legislative discretion, may be exercised by the city on behalf of the county, by the county on behalf of the city, or jointly by both the city and county. By way of illustration without limitation, a city and county may agree that, within a defined joint planning area, the city may adopt the text of a zoning or subdivision ordinance on behalf of the county and may administer and enforce such ordinance, but that all decisions establishing or amending the zoning classifications of properties shall be jointly determined by the two governing bodies.

(b) Any agreement authorized under subsection (a) shall be reduced to writing and shall be ratified by resolution of the governing body of each unit that is a party to the agreement. The agreement shall specify:

- (1) The area or areas within which the power specified in the agreement are to be exercised.
- (2) The powers that are to be exercised and the manner in which the powers are to be exercised by the parties (i.e., one unit on behalf of another or jointly).
- (3) The duration of the agreement.

- (4) The methods for amending the agreement (including the area within which the agreement will be effective) and terminating the agreement.

(c) If the city exercises any legislative or administrative powers or functions on behalf of a county under this section, then the agreement authorized under subsection (b) may provide for a means of representation of residents of the joint planning area in the same manner and to the same extent as representation of residents of an extraterritorial planning area is provided for under G.S. 160A-362.

(d) In exercising any power or function authorized under an agreement adopted pursuant to the section, a city or county governing board or administrative agency may exercise that power or function in accordance with such boards or agency's regular procedures and voting requirements."

Sec. 2. Article 4A of Chapter 160A of the General Statutes is amended by adding a new Part 6 to read as follows:

"Part 6.

"Interlocal Agreements Limiting Annexation Authority.

"§ 160A-58.20. *Interlocal Agreements Limiting Annexation Authority.*--(a) The following terms shall have the meaning indicated when used in this section.

- (1) 'Agreement.' An agreement authorized under subsection (b) of this section.
- (2) 'Involuntary annexation.' Annexation authorized or undertaken pursuant to Parts 2 or 3 of this Article.
- (3) 'Voluntary annexation.' Annexation authorized or undertaken pursuant to G.S. 160A-31, or Part 4 of this Article.

(b) Two or more municipalities or one or more municipalities and one or more counties may enter into binding written agreements with each other to set forth areas or boundaries within which or beyond which one or more of the participating municipalities will refrain from engaging in annexation (voluntary, involuntary, or both). Such agreements shall be of reasonable duration, not to exceed 20 years.

(c) Before engaging in involuntary annexation, a municipality that is a party to an agreement shall send to the chief administrative official of every other party to such agreement a copy of the notice of intent to annex territory specified in G.S. 160A-38(a) or 160A-49(a) (as applicable). Before engaging in voluntary annexation, a municipality that is a party to an agreement shall send to each other party to the agreement a copy of the statutorily required notice of public hearing on such proposed voluntary annexation. A failure to send the notice required herein shall render any annexation undertaken in disregard

of this requirement null and void with respect to any property covered under an agreement.

(d) If, on or before the date of a public hearing on voluntary annexation, an annexing municipality that is a party to an agreement receives from another party to such agreement a written statement protesting the proposed annexation on the basis of an alleged violation of such agreement, then an annexation ordinance adopted by the annexing municipality may not make the annexation effective sooner than 30 days following the date of the adoption of such ordinance.

(e) Monetary damages shall not constitute a remedy for breach of any agreement. However, an alleged breach of such agreement may be redressed as provided in this subsection.

- (1) Any party to an agreement entered into under this section who believes that another party has adopted an involuntary annexation ordinance in violation of the agreement may appeal the annexation in the manner set forth in G.S. 160A-38 or G.S. 160A-50 (as appropriate), except that the petitioning party to such an agreement need not demonstrate material injury or prejudice beyond the violation of the agreement. If the court concludes that the agreement has been violated, it shall, in addition to any other appropriate remedy, remand the ordinance to the municipal governing board for amendment of the annexation boundaries to exclude the area included in violation of the agreement.
- (2) Any party to an agreement who believes that another party has adopted a voluntary annexation ordinance in violation of the agreement may, not later than 30 days after the adoption of any such ordinance, file a petition in the superior court of the county in which the municipality is located seeking review of the action of the governing board adopting such ordinance.
 - a. Such petition shall explicitly state what exceptions are taken to the action of the governing body and what relief the petitioner seeks. Within 5 days after the petition is filed with the court, the party seeking review shall serve copies of the petition by certified mail, return receipt requested, upon the annexing municipality.
 - b. Within 15 days after receipt of the copy of the petition for review, or within such additional time as the court may allow, the municipality shall transmit to the reviewing court a copy of the annexation petition as well

as a copy of the annexation ordinance and any other minutes or documents that constitute the record of the annexation procedure.

- c. The court shall fix the date for review of annexation proceedings under this Part, which review shall preferably be within 30 days following the date of the petition to the end that review shall be expeditious and without unnecessary delays. The review shall be conducted by the court without a jury. The court may hear oral arguments and receive written briefs, and may take evidence intended to determine whether there has been a violation of an agreement authorized under this section.
- d. If the court determines that there has been a violation of an annexation agreement, it shall declare the annexation null and void and may order any additional relief that appears appropriate.
- e. If an area that has been voluntarily annexed is the subject of an appeal to the superior court or appellate division on the effective date of the ordinance, then the ordinance shall be deemed amended to make the effective date with respect to such area the date of the final judgment of the superior court or appellate division, whichever is appropriate."

Sec. 3. This act shall apply only to Orange County and to municipalities located within that county.

Sec. 4. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 22nd day of May, 1987.

H.B. 848

CHAPTER 234

AN ACT TO EXEMPT THE TOWN OF KNIGHTDALE FROM SIZE RESTRICTIONS ON SATELLITE ANNEXATIONS UNDER CERTAIN CONDITIONS.

The General Assembly of North Carolina enacts:

Section 1. A subdivision may be annexed under Part 4 of Article 4A of Chapter 160A of the General Statutes notwithstanding the limitation of G.S. 160A-58.1(b)(5) if the:

- (1) city annexing the area is providing water and sewer service to the subdivision;
- (2) subdivision is totally within the extraterritorial zoning jurisdiction of the city;

- (3) subdivision to be annexed shall have been zoned to a development density of not less than two units per acre; and
- (4) subdivision is receiving all city services.

The annexed area shall not be considered as satellite corporate limits for the further application of G.S. 160A-58.1(b)(5).

Sec. 2. This act applies only to the Town of Knightdale.

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 22nd day of May, 1987.

S.B. 123

CHAPTER 235

AN ACT TO PROVIDE ADDITIONAL PROCEDURES FOR
CALDWELL AND CHATHAM COUNTIES TO INCREASE THE
SIZE OF FIRE TAX DISTRICTS.

The General Assembly of North Carolina enacts:

Section 1. Section 3 of Chapter 502 of the 1985 Session Laws, as amended by Chapter 940 of the 1985 Session Laws, is amended by rewriting the second sentence to read:

"Section 2 of this act applies only to Caldwell, Chatham, Lee, and Wayne Counties. In applying Section 2 to Wayne County, however, G.S. 69-25.11A(a)(3) is amended by deleting the last two sentences of that subdivision."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 25th day of May, 1987.

S.B. 642

CHAPTER 236

AN ACT TO PROVIDE FOR THE ELECTION OF THE WILSON
COUNTY BOARD OF EDUCATION FROM SEVEN SINGLE-
MEMBER DISTRICTS, AS PROVIDED BY COURT ORDER.

The General Assembly of North Carolina enacts:

Section 1. Section 4 of Chapter 921, Session Laws of 1983 is rewritten to read:

"Sec. 4. (a) The Board of Education of Wilson County shall consist of seven members, to be elected in the general election. In the general election of 1988 and quadrennially thereafter, members shall be elected from Districts 2, 4, and 6 for four-year terms. In the general election of 1990 and quadrennially thereafter, members shall be elected from Districts 1, 3, 5, and 7 for four-year terms.

(b) Elections shall be nonpartisan, with the results determined by plurality in accordance with G.S. 163-292. In each district, the qualified voters of that district shall elect a candidate who resides in the district.

(c) Candidates shall file notices of candidacy for each election during the period beginning at noon on the second Monday in July and ending at noon on the second Monday in August of the year of the election, and except as provided by this subsection, filing shall be in accordance with general law.

(d) The boundaries of the districts shall be the same as those established in the consent decree in the case of *United States of America v. Wilson County Board of Education, et al*, case 86-889-CIV-5, United States District Court for the Eastern District of North Carolina, Raleigh Division, dated September 15, 1986.

(e) Vacancies in the Wilson County Board of Education shall be filled by appointment by the remaining members of the Board. The person so appointed must reside in the district of the vacating member, and shall serve for the remainder of the unexpired term.

(f) Terms of office of the Wilson County Board of Education begin on the second Monday in January following their election."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 25th day of May, 1987.

H.B. 698

CHAPTER 237

AN ACT TO AMEND CHAPTER 54B OF THE GENERAL STATUTES TO MAKE TECHNICAL CHANGES RELATING TO SAVINGS AND LOAN ASSOCIATIONS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 54B-8(c) is amended by adding the word "association" between the words "federal" and "and" in the second sentence.

Sec. 2. G.S. 54B-17 is amended by deleting the second sentence and adding the following language:

"Contracts for such insurance may be made only with an insurance corporation created by an act of Congress."

Sec. 3. G.S. 54B-33 is amended by: (a) deleting subsection (c) and adding the following language:

"(c) The association shall submit a plan of conversion as a part of the application to the Administrator, and he may approve it with or without amendment, if it appears that:

(1) After conversion the association will be in sound financial condition and will be soundly managed;

(2) The conversion will not impair the capital of the association nor adversely affect the association's operations;

(3) The conversion will be fair and equitable to the members of the association and no person whether member, employee or otherwise, will receive any inequitable gain or advantage by reason of the conversion;

(4) The savings and loan services provided to the public by the association will not be adversely affected by the conversion;

(5) The substance of the plan has been approved by a vote of two thirds of the board of directors of the association;

(6) All shares of stock issued in connection with the conversion are offered first to the members of the association;

(7) All stock shall be offered to members of the association and others in prescribed amounts and otherwise pursuant to a formula and procedure which is fair and equitable and will be fairly disclosed to all interested persons;

(8) The plan provides a statement as to whether stockholders shall have preemptive rights to acquire additional or treasury shares of the association and any provision limiting or denying said rights; and

(9) The conversion shall not be complete until all stock offered in connection with the conversion has been subscribed.

If he approves the plan, then the plan shall be submitted to the members as provided in the next subsection. If he refuses to approve the plan, he shall state his objections in writing and give the converting association an opportunity to amend the plan to obviate such objections or to appeal his decision to the commission."

(b) Rewriting subsection (d) to read as follows:

"(d) After lawful notice to the members of the association and full and fair disclosure, the substance of the plan must be approved by a majority of the total votes which members of the association are eligible and entitled to cast. Such a vote by the members may be in person or by proxy. Following the vote of the members, the results of the vote certified by an appropriate officer of the association shall be filed with the Administrator. The Administrator shall then either approve or disapprove the requested conversion. After approval of the conversion, the Administrator shall supervise and monitor the conversion process and he shall ensure that the conversion is conducted pursuant to law and the association's approved plan of conversion."

(c) Rewriting subsection (f) to read as follows:

"(f) The administrator may promulgate such rules and regulations as may be necessary to govern conversions; provided, however, that such rules and regulations as may be promulgated by the

Administrator shall be equal to or exceed the requirements for conversion imposed by the rules and regulations governing conversions of federal chartered mutual savings and loan associations of the Federal Home Loan Bank Board as set forth in the Federal Register, Vol. 44, No. 62, Thursday, March 29, 1979, entitled 'Part 563b Conversion From Mutual to Stock Form' as these may be amended from time to time and other applicable rules and regulations effective as of the date of ratification."

(d) Repealing subsection (g).

Sec. 4. G.S. 54B-70 is amended by rewriting subsection (m) to read as follows:

"(m) Claims against a State association in receivership shall have the following order of priority for payment:

(1) Costs, expenses and debts of the association incurred on or after the date of the appointment of the receiver, including compensation for the receiver;

(2) Claims of holders of special purpose or thrift accounts;

(3) Claims of holders of withdrawable accounts;

(4) Claims of general creditors;

(5) Claims of stockholders of a stock association;

(6) All remaining assets to members and stockholders in an amount proportionate to their holdings as of the date of the appointment of the receiver."

Sec. 5. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 25th day of May, 1987.

H.B. 915

CHAPTER 238

AN ACT TO ALLOW HALIFAX COUNTY TO CONVEY AT PRIVATE SALE TO THE HALIFAX COUNTY HUMANE SOCIETY PART OF THE COUNTY FARM PROPERTY.

The General Assembly of North Carolina enacts:

Section 1. Notwithstanding G.S. 153A-176 or Article 12 of Chapter 160A of the General Statutes, Halifax County may convey to the Halifax County Humane Society, Inc., at private sale, with or without monetary consideration, any or all of its right, title and interest in not to exceed five acres of the county farm property in Halifax Township, for use as an animal shelter.

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 25th day of May, 1987.

H.B.916

CHAPTER 239

AN ACT TO ALLOW HALIFAX COUNTY TO CONVEY AT PRIVATE SALE TO THE ROANOKE CANAL COMMISSION, INC., CERTAIN PROPERTY DONATED TO IT.

The General Assembly of North Carolina enacts:

Section 1. Notwithstanding G.S. 153A-176 or Article 12 of Chapter 160A of the General Statutes, Halifax County may convey to the Roanoke Canal Commission, Inc., at private sale, with or without monetary consideration, any or all of its right, title and interest in the property conveyed to it by Champion International Corporation, a full description of which appears in Book 1344, Page 49, Halifax County Registry.

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 25th day of May, 1987.

H.B. 207

CHAPTER 240

AN ACT TO CREATE SPECIALIZED REGISTRATION PLATES FOR MEMBERS OF THE COAST GUARD AUXILIARY.

The General Assembly of North Carolina enacts:

Section 1. Chapter 20 of the General Statutes is amended by adding a new section to read:

" § 20-81.9. *Special plates for members of the United States Coast Guard Auxiliary.*--(a) Every owner of a private passenger motor vehicle or pickup truck not exceeding a gross weight of 4,000 pounds, who is an active member of the United States Coast Guard Auxiliary, upon the payment of registration and licensing fees for such vehicle as required by law and an additional fee of ten dollars (\$10.00), shall be issued license plates of the same form and character as other license plates now or hereinafter authorized by law to be issued upon such vehicles except that such license plates shall in addition bear on the face thereof the following words: 'U.S. Coast Guard Auxiliary'.

(b) Application for special registration plates pursuant to this section shall be made on forms provided by the Division of Motor Vehicles and shall contain proof satisfactory to the Division that the applicant is an active member of the United States Coast Guard Auxiliary. Applications must be filed prior to 60 days before the day when

regular registration plates for the year are made available to motor vehicle owners.

(c) When the holder of a license plate issued pursuant to this section becomes ineligible for it due to change in status, he shall exchange the specialized plate for a standard plate within 30 days.

(d) The revenue derived from the additional fee for such plates shall be placed in a separate fund designated the 'United States Coast Guard Auxiliary Plate Fund'. After deducting the cost of the plates, plus budgetary requirements for handling and issuance, to be determined by the Commissioner of Motor Vehicles, any remaining moneys derived from the additional fee for such plates shall be periodically transferred in accordance with G.S. 20-81.3(c)."

Sec. 2. This act shall become effective October 1, 1987.

In the General Assembly read three times and ratified this the 27th day of May, 1987.

H.B. 767

CHAPTER 241

AN ACT TO AUTHORIZE DARE COUNTY TO DISPOSE OF PROPERTY BY PRIVATE SALE IN CONNECTION WITH A LEASE-PURCHASE ARRANGEMENT FOR CONSTRUCTION OF A LAW ENFORCEMENT CENTER AND JAIL.

The General Assembly of North Carolina enacts:

Section 1. Notwithstanding Article 12 of Chapter 160A of the General Statutes, the County of Dare may convey at separate private sales:

- (1) certain lands lying in Nags Head Township in the vicinity of the Dare County Regional Airport as part of a lease-purchase, installment purchase or sale, construction, repurchase arrangement for construction of a law enforcement center and jail;
- (2) certain lands lying within or near the Town of Manteo, now owned or to be purchased by the County, as part of a lease-purchase, installment purchase or sale, construction, repurchase agreement for construction of buildings, parking facilities and all related incidental buildings or facilities to be used for any county-related or county-approved purposes.

Sec. 2. The lands shall be described in a resolution adopted by the Board of Commissioners of Dare County.

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 28th day of May, 1987.

H.B. 909

CHAPTER 242

AN ACT TO AUTHORIZE THE CITY OF SOUTHPORT TO ADOPT AND ENACT ORDINANCES REGULATING THE REMOVAL, REPLACEMENT, AND PRESERVATION OF TREES WITHIN THE CITY'S TERRITORIAL JURISDICTION.

The General Assembly of North Carolina enacts:

Section 1. The City of Southport is hereby authorized to adopt ordinances, only after holding public hearings, to regulate the removal of trees from public and private property within its territorial jurisdiction in order to preserve, protect, and enhance one of the most valuable natural resources of the community and to protect the health, safety, and welfare of its citizens.

Sec. 2. This act shall apply only to the City of Southport.

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 28th day of May, 1987.

S.B. 425

CHAPTER 243

AN ACT TO ESTABLISH THE PURPOSES OF THE STATE PARKS SYSTEM.

The General Assembly of North Carolina enacts:

Section 1. Subchapter II of Chapter 113 of the General Statutes is amended by adding a new Article 2C to read:

"Article 2C.

"State Parks Act.

"§ 113-44.7. *Short title.*--This Article shall be known as the State Parks Act.

"§ 113-44.8. *Declaration of policy and purpose.*--(a) The State of North Carolina offers unique archaeologic, geologic, biological, scenic, and recreational resources. These resources are part of the heritage of the people of this State. The heritage of a people should be preserved and managed by those people for their use and for the use of their visitors and descendants.

(b) The General Assembly finds it appropriate to establish the State Parks System. This system shall consist of parks which include representative examples of the resources sought to be preserved by this Article, together with such surrounding lands as may be appropriate. Park lands are to be used by the people of this State and their visitors in order to promote understanding of and pride in the natural heritage

of this State.

(c) The tax dollars of the people of the State should be expended in an efficient and effective manner for the purpose of assuring that the State Parks System is adequate to accomplish the goals as defined in this Article.

(d) The purpose of this Article is to establish methods and principles for the planned acquisition, development, and operation of State parks.

" § 113-44.9. *Definitions.*--As used in this Article, unless the context requires otherwise:

- (1) 'Department' means the Department of Natural Resources and Community Development.
- (2) 'Park' means any tract of land or body of water comprising part of the State Parks System under this Article, including existing State parks, State natural areas, State recreation areas, State trails, State rivers, and State lakes.
- (3) 'Plan' means State Parks System Plan.
- (4) 'Secretary' means the Secretary of the Department of Natural Resources and Community Development.
- (5) 'State Parks System' or 'system' mean all those lands and waters which comprise the parks system of the State as established under this Article.

" § 113-44.10. *Powers of the Secretary.*--The Secretary shall implement the provisions of this Article and shall be responsible for the administration of the State Parks System.

" § 113-44.11. *Preparation of a System Plan.*--(a) The Secretary shall prepare and adopt a State Parks System Plan by December 31, 1988. The Plan, at a minimum, shall:

- (1) Outline a method whereby the mission and purposes of the State Parks System as defined in G.S. 113-44.8 can be achieved in a reasonable, timely, and cost-effective manner;
- (2) Evaluate existing parks against these standards to determine their statewide significance;
- (3) Identify duplications and deficiencies in the current State Parks System and make recommendations for correction;
- (4) Describe the resources of the existing State Parks System and their current uses, identify conflicts created by those uses, and propose solutions to them; and
- (5) Describe anticipated trends in usage of the State Parks System, detail what impacts these trends may have on the State Parks System, and recommend means and methods to

accommodate those trends successfully.

(b) The Plan shall be developed with full public participation, including a series of public meetings held on adequate notice under rules which shall be adopted by the Secretary. The purpose of the public meetings and other public participation shall be to obtain from the public:

- (1) Views and information on the needs of the public for recreational resources in the State Parks System;
- (2) Views and information on the manner in which these needs should be addressed;
- (3) Review of the draft plan prepared by the Secretary before he adopts the Plan.

(c) The Secretary shall revise the Plan at intervals not exceeding five years. Revisions to the Plan shall be made consistent with and under the rules providing public participation in adoption of the Plan.

" § 113-44.12. *Classification of parks resources.*--After adopting the Plan, the Secretary shall identify and classify the major resources of each of the parks in the State Parks System, in order to establish the major purpose or purposes of each of the parks, consistent with the Plan and the purposes of this Article.

" § 113-44.13. *General management plans.*--Every park classified pursuant to G.S. 113-44.12 shall have a general management plan. The plan shall include a statement of purpose for the park based upon its relationship to the System Plan and its classification. An analysis of the major resources and facilities on hand to achieve those purposes shall be completed along with a statement of management direction. The general management plan shall be revised as necessary to comply with the System Plan and to achieve the purposes of this Article.

" § 113-44.14. *Additions to and deletions from the State Parks System.*--(a) If, in the course of implementing G.S. 113-44.12 the Secretary determines that the major purposes of a park are not consistent with the purposes of this Article and the Plan, the Secretary may propose to the General Assembly the deletion of that park from the State Parks System. On a majority vote of each house of the General Assembly, the General Assembly may remove the park from the State Parks System. No other agency or governmental body of the State shall have the power to remove a park or any part from the State Parks System.

(b) New parks shall be added to the State Parks System by the Department after authorization by the General Assembly. Each additional park shall be authorized only by an act of the General

Assembly. Additions shall be consistent with and shall address the needs of the State Parks System as described in the Plan. All additions shall be accompanied by adequate authorization and appropriations for land acquisition, development, and operations."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 2nd day of June, 1987.

H.B. 79

CHAPTER 244

AN ACT TO REPEAL INACTIVE AND OBSOLETE STATUTES IN CHAPTER 106, AGRICULTURE.

The General Assembly of North Carolina enacts:

Section 1. The following statutes and articles in Chapter 106 of the General Statutes are repealed:

- (a) G.S. 106-20;
- (b) Article 3 (G.S. 106-51);
- (c) Article 5 (G.S. 106-66 and G.S. 106-67);
- (d) Article 6 (G.S. 106-68 through 106-78);
- (e) Article 7 (G.S. 106-79 and 106-80);
- (f) Article 10 (G.S. 106-111);
- (g) Article 19 (G.S. 106-198 through 106-202);
- (h) Article 27 (G.S. 106-256 through 106-259);
- (i) Article 33 (G.S. 106-303);
- (j) Article 46 (G.S. 106-521 through 106-527); and
- (k) Article 48 (G.S. 106-535 through 106-538).

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 2nd day of June, 1987.

H.B. 703

CHAPTER 245

AN ACT TO REPEAL THE PROHIBITION AGAINST BEAR HUNTING IN GATES COUNTY.

The General Assembly of North Carolina enacts:

Section 1. Section 1 of Chapter 121 of the 1969 Session Laws as rewritten by Section 1 of Chapter 124 of the 1973 Session Laws is rewritten to read:

"Section 1. There shall be no open season for the taking of wild turkeys in Gates County."

Sec. 2. G.S. 113-133.1(e) is amended in the entry in the chart for Gates County by inserting after the language: "; Session Laws 1973, Chapter 124, amending Session Laws 1969, Chapter 121" the language "(as it pertains to wild turkeys)".

Sec. 3. This act applies only to Gates County.

Sec. 4. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 2nd day of June, 1987.

H.B. 709

CHAPTER 246

AN ACT TO PROVIDE CONSISTENCY AND CLARITY TO THE GUIDELINES ESTABLISHED FOR THE ASSESSMENT OF CIVIL PENALTIES UNDER THE MINING ACT OF 1971, THE NORTH CAROLINA WELL CONSTRUCTION ACT, AND THE SEDIMENTATION POLLUTION CONTROL ACT OF 1973.

The General Assembly of North Carolina enacts:

Section 1. G.S. 74-64(a)(1) is amended by adding a subdivision after sub-subdivision b. to read:

"c. In determining the amount of the penalty, the Department shall consider the degree and extent of harm caused by the violation, the cost of rectifying the damage, the amount of money the violator saved by his noncompliance, whether the violation was committed willfully, and the prior record of the violator in complying or failing to comply with this Article."

Sec. 2. G.S. 87-94(c) is amended by deleting "compliance" and substituting "noncompliance".

Sec. 3. G.S. 113A-64(a) reads as rewritten:

"(a) Civil Penalties. (1) Any person who violates any of the provisions of this Article or any ordinance, rule, regulation, or order adopted or issued pursuant to this Article by the Commission or by a local government, or who initiates or continues a land-disturbing activity for which an erosion control plan is required except in accordance with the terms, conditions, and provisions of an approved plan, shall be subject to a civil penalty of not more than one hundred dollars (\$100.00). No penalty shall be assessed until the person alleged to be in violation has been notified of the violation. Each day of a continuing violation shall constitute a separate violation under G.S. 113A-64(a)(1).

(2) The Secretary, for violations under the Commission's jurisdiction, or the governing body of any local government having jurisdiction, shall determine the amount of the civil penalty to be assessed under G.S. 113A-64(a) and shall make written demand for

payment upon the person responsible for the violation, and shall set forth in detail the violation for which the penalty has been invoked. If payment is not received or equitable settlement reached within 30 days after demand for payment is made, the Secretary shall refer the matter to the Attorney General for the institution of a civil action in the name of the State in the superior court of the county in which the violation is alleged to have occurred to recover the amount of the penalty, and local governments shall refer such matters to their respective attorneys for the institution of a civil action in the name of the local government in the appropriate division of the General Court of Justice of the county in which the violation is alleged to have occurred for recovery of the penalty. Any sums recovered shall be used to carry out the purposes and requirements of this Article.

(3) In determining the amount of the penalty, the Secretary shall consider the degree and extent of harm caused by the violation, the cost of rectifying the damage, the amount of money the violator saved by his noncompliance, whether the violation was committed willfully, and the prior record of the violator in complying or failing to comply with this Article."

Sec. 4. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 2nd day of June, 1987.

H.B. 722

CHAPTER 247

AN ACT TO EXEMPT THE TOWN OF GRIFTON FROM CERTAIN ZONING NOTICE REQUIREMENTS, AND CONCERNING ZONING IN THE CITY OF GOLDSBORO.

The General Assembly of North Carolina enacts:

Section 1. Notwithstanding G.S. 160A-384 or any other provision of law, a city shall not be required to mail any notice of proposed zoning classification actions to any property owner or other person.

Sec. 2. Section 1 of this act applies only to the Town of Grifton.

Sec. 3. Under the zoning ordinance of the City of Goldsboro, the following described territory shall be in the Office and Institutional zone and no parking, set-back line, or other restrictions shall apply to the use of that property as a church:

Lot #13, as shown on a plat of Dr. A. H. Zealy subdivision recorded in plat cabinet D slide 108 of the Wayne County Registry, it further being described as lot 17, block 1 as shown on Wayne County

Tax Map 107.

Sec. 4. This act is effective upon ratification, but Section 3 which applies to the City of Goldsboro will expire on June 30, 1988.

In the General Assembly read three times and ratified this the 2nd day of June, 1987.

H.B. 748

CHAPTER 248

AN ACT TO PROHIBIT HUNTING FROM THE ROADS IN PART OF CRAVEN COUNTY.

The General Assembly of North Carolina enacts:

Section 1. It is unlawful to hunt, take or kill any animal or bird on or from the right-of-way of Secondary Road 1101, from Secondary Road 1004 to the United States Forest Service Croatan Forest boundary line.

Sec. 2. Violation of this act is a misdemeanor punishable for a first conviction by a fine of not less than ten dollars (\$10.00) nor more than fifty dollars (\$50.00) or by imprisonment not to exceed 30 days, and punishable for a second conviction within three years by a fine of not less than fifty dollars (\$50.00) nor more than two hundred dollars (\$200.00), by imprisonment not to exceed 90 days or by both.

Sec. 3. This act is enforceable by law enforcement officers of the Wildlife Resources Commission, by deputy sheriffs and by other peace officers with general subject matter jurisdiction.

Sec. 4. This act shall become effective October 1, 1987.

In the General Assembly read three times and ratified this the 2nd day of June, 1987.

H.B. 776

CHAPTER 249

AN ACT TO REGULATE THE SHINING OF LIGHTS IN DEER AREAS IN THE COUNTIES OF BERTIE AND MADISON.

The General Assembly of North Carolina enacts:

Section 1. It is unlawful to shine a light intentionally upon a deer or to sweep a light in search of deer between the hours of 11:00 p.m. and one-half hour before sunrise, in Bertie County.

Sec. 2. It is unlawful to shine a light intentionally upon a deer or to sweep a light in search of deer between the hours of one-half hour after sunset and one-half hour before sunrise, in Madison County.

Sec. 3. Section 1 of this act shall not be construed to prevent:

- (1) the lawful hunting of raccoon or opossum during open season with artificial lights designed or commonly used in taking raccoon and opossum at night;
- (2) the necessary shining of lights by landholders on their own lands;
- (3) the shining of lights necessary to normal travel by motor vehicles on roads or highways; or
- (4) the use of lights by campers and others who are legitimately in these areas for other reasons and who are not attempting to attract or to immobilize deer by the use of lights.

Sec. 4. Violation of this act is a misdemeanor punishable for a first conviction by a fine of not less than ten dollars (\$10.00) nor more than fifty dollars (\$50.00) or imprisonment not to exceed 30 days, and punishable for a second conviction within three years by a fine of not less than fifty dollars (\$50.00) nor more than two hundred dollars (\$200.00), by imprisonment not to exceed 90 days or by both.

Sec. 5. This act is enforceable by law enforcement officers of the Wildlife Resources Commission, by sheriffs and deputy sheriffs, and by other peace officers with general subject matter jurisdiction.

Sec. 6. This act applies only to the Counties of Bertie and Madison.

Sec. 7. This act shall become effective October 1, 1987.

In the General Assembly read three times and ratified this the 2nd day of June, 1987.

S.B. 500

CHAPTER 250

AN ACT TO REMOVE TERRITORY FROM THE TOWN OF HUDSON AND ADD IT TO THE CITY OF LENOIR.

The General Assembly of North Carolina enacts:

Section 1. The following described territory is removed from the Town of Hudson:

BEGINNING at a point, said point being located S 44 degrees 50' W-450 feet from the center of the Carolina & North Western Railroad; also being south of Shasta Lane being in the Town of Hudson and the City of Lenoir's corporate limits, the line follows with the southern property line of the Hibriten Land and Lumber Company Subdivision (Plat Bk. 3, Page 12) and runs as follows: S 44 degrees 50' W-797.5 feet to a point; thence N 84 degrees 24' W-1115 feet to a point, thence N 2 degrees 53' E-385 feet to a point in the Town of Hudson

corporate limits; thence with said corporate limits as follows: N 27 degrees 47' W-190 feet more or less, thence S 89 degrees 05' E-1348.18 feet to a point in the northern right-of-way of Shasta Lane; thence with said right-of-way of N 45 degrees 08' E-151.14 feet to a point; thence crossing Shasta Lane S 48 degrees 14' E-165.61 feet; thence S 89 degrees 05' E-229 feet to the point of beginning.

Sec. 2. The territory described in Section 1 of this act is annexed to the corporate limits of the City of Lenoir.

Sec. 3. The territory described in Section 1 of this act shall be liable for the full amount of property taxes levied by the Town of Hudson for fiscal year 1986-87, and for the full amount of property taxes levied by the City of Lenoir for fiscal year 1987-88.

Sec. 4. As soon as possible following the effective date of this act, the Town of Hudson and the City of Lenoir each shall prepare a map of the new corporate limits, showing clearly the removed or annexed area. The maps shall state on their faces that the indicated territory was removed or annexed by this act, with reference to the Session Laws Chapter number and effective date. Copies of the maps shall be filed in the offices of the Secretary of State, the Caldwell County Register of Deeds and the appropriate boards of election.

Sec. 5. This act shall become effective on June 30, 1987.

In the General Assembly read three times and ratified this the 2nd day of June, 1987.

H.B. 218

CHAPTER 251

AN ACT TO ALLOW THE DISPOSITION OF CERTAIN
PROPERTIES HELD IN THE EXECUTIVE MANSION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143B-79 is amended by adding the following subsection:

"(7) The Committee may dispose of property held in the Executive Mansion after consultation with a review committee comprised of one person from the Executive Mansion Fine Arts Committee, appointed by its chairman; one person from the Department of Administration appointed by the Secretary of Administration; and two qualified professionals from the Department of Cultural Resources, Division of Archives and History, appointed by the Secretary of Cultural Resources. Upon request of the Executive Mansion Fine Arts Committee, the review committee will view proposed items for

disposition and make a recommendation to the North Carolina Historical Commission who will make a final decision. The Historical Commission must consider whether the disposition is in the best interest of the State of North Carolina. If such property is sold, (i) if the records with regard to the property reflect that it was acquired by the State by gift or devise the net proceeds of each such sale shall be deposited in the State Treasury to the credit of the Executive Mansion, Special Fund, and shall be used only for the purchase, conservation, restoration or repair of other property for use in the Executive Mansion and; (ii) if the records with regard to the property reflect that the property was acquired by the State by purchase with appropriated funds or do not show the manner of acquisition, the net proceeds of such sale shall be deposited in the General Fund."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 2nd day of June, 1987.

H.B. 290

CHAPTER 252

AN ACT TO PROVIDE FOR ISSUANCE OF PERSONALIZED REGISTRATION PLATES FOR COMMERCIAL VEHICLES.

The General Assembly of North Carolina enacts:

Section 1. The first sentence of G.S. 20-81.3(a) is rewritten to read:

"The Commissioner may promulgate rules on the issuance of special personalized registration plates to the owner of private passenger motor vehicles, private trucks, or commercial motor vehicles weighing 5,000 pounds or more gross weight, in lieu of other number plates."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 2nd day of June, 1987.

H.B. 338

CHAPTER 253

AN ACT TO ANNEX ADDITIONAL TERRITORY TO THE TOWN OF FALLSTON.

The General Assembly of North Carolina enacts:

Section 1. The corporate limits of the Town of Fallston are enlarged to include the following area:

BEGINNING on an iron in the center of the right of way for State Road No. 1650 at the point of intersection with the center of the right

of way for State Road No. 1637; and runs thence with the East line of Lloyd Wilson, North 2 - 46 East 500 feet to an iron, Northwest corner of R. Dale Dixon and Southwest corner of W. D. Lattimore; thence with the South lines of Lattimore, South 67 - 59 East 686.4 feet to an iron, North 58 - 01 East 379.5 feet to an iron and North 64 - 35 East 474.8 feet to an iron, Southeast corner of Lattimore and Southwest corner of Lutz in the North line of Charles C. Ervin; thence with the North line of Ervin, South 74 - 00 East 527.9 feet to an iron in the center of the right of way for N. C. Highway No. 18, Northeast corner of Ervin; thence with the East line of Ervin, South 1 - 30 - 50 West 265.13 feet to an iron in the center of said right of way, Northwest corner of Euell Lackey; thence with the Lackey property, North 84 - 50 East 173.5 feet to an iron, South 31 - 06 East 138 feet to an iron, and South 0 - 30 West 295 feet to an iron, Southeast corner of Lackey and Southwest corner of Lloyd McCraw in the North line of Charles C. Ervin; thence with the South line of McCraw, South 46 - 12 - 01 East 467.54 feet to an iron, South 68 - 02 - 41 East 1,211.82 feet to an iron, and South 70 - 02 - 50 East 496.62 feet to a stone, McCraw's Southeast corner in the West line of Helene S. Kendrick; thence with the west line of Kendrick, South 44 West 700 feet to a point in the common line of the Falls property and Helene S. Kendrick, a new point in the present Town Limit line for the Town of Fallston; thence with the present Town Limit line as it curves to the left on a radius of 3960' to a point in the right of way for N. C. Highway No. 18 in the East line of Douglas Tysiner; thence continuing with the present Town Limit line and the Tysiner boundary, North 1 East 320 feet to an iron, South 71 West 364 feet to an iron, and South 58 - 13 West 75 feet to a stake, Northeast corner of Stough Willis; thence continuing with the present Town Limit line, South 57 - 15 West 420 feet to a point and continuing on a radius of 3960' as the present Town Limit line curves to the left to a point in the center of the right of way for State Road No. 1650 in the East line of Aaron Wright; thence with the Wright property, North 11 - 59 West 70 feet to an iron, South 78 - 01 West 405.5 feet to an iron in the East line of Velma Wright; thence continuing through the Wright property, North 39 - 09 West 202.3 feet to an iron, North 38 - 57 West 238 feet to a stake, and North 63 - 30 West 643.2 feet to an iron, North corner of Wright and East corner of Wanda Davenport; thence with the Northeast line of Davenport, North 38 - 17 West 773.2 feet to an iron, North corner of Davenport in the South line of the property of Trustees of New Bethel Baptist Church; thence with the Church property, North 52 - 25 East 224.4 feet to a railroad spike in the center of the right of way for State Road No. 1637; thence with

the center of said right of way, North 89 - 03 East 1350 feet to the place of BEGINNING, according to a map drawn from deeds and aerial photographs by Thomas D. Kendrick, RLS.

Sec. 2. This act shall become effective June 30, 1987.

In the General Assembly read three times and ratified this the 2nd day of June, 1987.

H.B. 375

CHAPTER 254

AN ACT TO ANNEX PROPERTY OWNED BY THE CITY OF BREVARD.

The General Assembly of North Carolina enacts:

Section 1. The following described areas are included within the corporate limits of the City of Brevard:

Tract 1

BEGINNING at a stake in the center of Catheys Creek, Walter A. Weilt and Jack Wilson's corner and runs thence with the Weilt line, North 86 deg. 30 min. West 25 feet to a stake in the Weilt line at the bank of Catheys Creek; thence North 86 deg. 30 min. West 235.2 feet to a stake; thence South 03 deg. 25 min. West 115.6 feet to a stake; thence South 86 deg. 32 min. East 263.7 feet to a stake on the West bank of Catheys Creek; thence South 86 deg. 32 min. East 25 feet to a stake in the center of Catheys Creek; thence up and with the center of Catheys Creek, North 10 deg. 30 min. West 119 feet to the **BEGINNING**. Containing .74 acre, more or less as surveyed by C. E. Smith and platted by William Leonard, Registered Land Surveyor, on September 25, 1965.

Being all of that same property described in that certain deed from Jack Wilson and wife, Thelma Wilson, to F. L. McCall and wife, Inez A. McCall, dated October 8, 1965 and recorded in Deed Book 163, page 98, Records of Deeds for Transylvania County, North Carolina.

Tract 2

BEGINNING at a stake, Southwest corner of the Grantor and Northwest corner of property now or formerly belonging to Jack Wilson and Wife, Thelma Wilson, and runs South 14 deg. 2 min. East 55 feet to a stake; thence South 86 deg. 21 min. East 285.43 feet to a stake in the center of Catheys Creek; thence with the center of Catheys Creek, North 10 deg. 30 min. West 55 feet to a stake; thence North 86 deg. 32 min West 288.7 feet to the **BEGINNING**. Containing .348 acres, more or less.

Being all of that same property described in that certain deed from Jack Wilson and wife, Thelma Wilson, to F. L. McCall and wife, Inez A. McCall, dated October 22, 1971 and recorded in Deed Book

191, page 504, Records of Deeds for Transylvania County, North Carolina.

Tract 3

BEGINNING at an iron pin in the center of Catheys Creek Road, the common corner of U. S. Government and Transylvania Estates property, and runs with the center of Catheys Creek Road South 37 deg. East 77.33 feet to an iron pin in the center of the Catheys Creek Road; thence leaving Catheys Creek Road and runs South 57 deg. 32 min. West 59.42 feet to an iron pin in the center of Catheys Creek; thence with the center of Catheys Creek North 19 deg. 12 min. West 99.25 feet to an iron pin, another corner of the U. S. Government and the Transylvania Estates property; thence East 36.75 feet to the BEGINNING.

Being all of that same property described in that certain deed from Transylvania Estates, Inc., a North Carolina corporation, to F. L. McCall and wife, Inez A. McCall, dated April 19, 1966 and recorded in Deed Book 169, page 218, Records of Deeds for Transylvania County, North Carolina.

Tract 4

BEGINNING at a point located in the center of Catheys Creek, said point being located North 28 deg. East 20 feet from a 2-inch by 4-inch post with a 4-inch birch, a 10-inch poplar and an 8-inch poplar as witnesses, said beginning point being the northeast corner of the Thomas H. Jordan property and runs thence with the center of said Creek as follows: South 65 deg. 29 min. East 292 feet, South 81 deg. 37 min. East 922.7 feet, South 65 deg. 04 min. East 542.5 feet, and South 10 deg. 03 min. East 339.2 feet to a point located in the center of said Creek, said point being located South 67 deg. 45 min. West 56.8 feet from a locust located on the east bank of the Catheys Creek Road; thence leaving said creek, North 86 deg. 30 min. West 2,233 feet to a stake, the southeast corner of the Thomas H. Jordan property; thence with the line dividing the property herein conveyed and the said Jordan property, North 28 deg. East 879 feet to the BEGINNING, containing 24 1/2 acres, more or less, as surveyed and platted by P. R. Raxter, RLS, in July, 1958, and as revised in August, 1962.

Tract 5

BEGINNING at a point located on the south bank of the French Broad River near the southeast end of the existing bridge for the Wilson Road (State Road 1540) to cross over the French Broad River and runs thence North 54° 54' 20" West 42.97 feet to a point located in the center of the said river; thence up and with the center of the French Broad River the following nine calls: North 46° 13' East 225.43 feet; North 64° 43' 40" East 299.69 feet; North 75° 16' 40" East 186.95 feet, North 81° 30' 40" East 279.89 feet; North 72° 53'

10" East 174.13 feet; North 46° 34' 10" East 226.68 feet; North 59° 06' 30" East 65.27 feet; South 69° 38' East 223.61 feet and South 43° 11' 20" East 134.68 feet to a point located in the center of the French Broad River; thence leaving the French Broad River running along the line of other property belonging to the Feaster Heirs, South 39° 08' 30" West (crossing an iron pin set on the south bank of the French Broad River at 55 feet) 228.11 feet to an iron pin; thence continuing with the line of the property of the Feaster Heirs as follows: South 19° 21' 10" West 332.6 feet to an iron pin; South 32° 54' 50" West 582.37 feet to an iron pin; South 39° 14' 10" West 328.94 feet to an iron pin set near the south margin of a dirt farm road; South 29° 35' 10" West 366.77 feet to an iron pin located on the north side of the existing Wilson Road; thence in a northwesterly direction on a radius of 1,004.93 feet, a distance of 434.27 feet to a point; North 33° 58' 0" West 153.84 feet to a point; North 35° 28' West (crossing a North Carolina Department of Transportation right-of-way concrete monument at 3.6 feet) 352 feet to another Highway right-of-way concrete monument and North 30° 01' 30" West 316.43 feet to the BEGINNING containing 27.69 acres, more or less, as surveyed and platted by Lavender, Smith & Associates, Registered Land Surveyors on August 30, 1984

Tract 6

BEGINNING at an iron pin on a knoll, said pin situated S 11 deg. 18 min. E 407 feet from the southwest corner of the main part of the building known as Ross Hall, and runs thence, N 85 deg. 45 min. E 275 feet to an iron pin; thence, S 2 deg. 43 min. E 399.5 feet to an iron pin; thence, N 73 deg. 28 min. W 282 feet to a stake; thence, N 4 deg. 15 min. W 300 feet to the BEGINNING. Containing 2.175 acres.

Tract 7

The area within the right-of-way or easement for that certain road beginning on U. S. Highway 64, almost opposite the Fisher Road, and running thence in a general southeast direction across the property of the Brevard College Corporation to a point south of Ross Hall; also including the old road running from that point to the property described in Tract 6 above. In the event that no right-of-way agreements or easements for the two roads are of record, this description shall include the area between the respective edges of the two roads, so far as identifiable on the ground. This tract shall include and encompass the area now serving as the access road from the property described in Tract 6 to Neely Road and the property identified in Tract 8 thereby providing for a continuous boundary among the three tracts.

Tract 8

BEGINNING at a point located in the center of Neely Road and in the center of the bridge over Bridge Creek, the northwest corner of the W.J. Wallis property, and runs thence with the center of Bridge Creek in a southeasterly direction as follows: South 60° 59' East 85.26 feet to a point; South 33° 38' 03" East 25.12 feet to a point and South 55° 52' East 9.21 feet to a point located in the center of Bridge Creek; thence leaving Bridge Creek and running a new line, South 23° 38' 05" West (crossing an iron pin at 8.5 feet) 91.75 feet to an iron pin; thence another new line, North 67° 52' 30" West (crossing an iron pin at 87.04 feet) 118.31 feet to a point located in the center of Neely Road; thence with the center of Neely Road, North 30° 18' 21" East 68.77 feet to a point and North 18° 07' 09" East 50.05 feet to the **BEGINNING**.

Sec. 2. The boundaries of the areas annexed by Section 1 of this act shall not be considered external boundaries for the purposes of annexations under Part 3 of Article 4A, G.S. Chapter 160A until the respective areas become part of the primary corporate limits. The areas shall not be considered for purposes of making calculations under G.S. 160A-58.1(b)(5).

Sec. 3. Upon ratification of this act, the appropriate changes to the official map of the City shall be made, and copies shall be filed in the Offices of the Secretary of State, the Transylvania County Register of Deeds and the appropriate board of elections.

Sec. 4. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 2nd day of June, 1987.

H.B. 449

CHAPTER 255**AN ACT TO EXTEND THE CORPORATE LIMITS OF THE TOWN OF MURPHY.**

The General Assembly of North Carolina enacts:

Section 1. The corporate limits of the Town of Murphy are extended to include the area within the following description:

BEGINNING AT A POINT on the North bank of Valley River, said point being the Southern most corner of Valley Village Shopping Center, said point having a Tennessee Valley Authority (T.V.A.) Grid Coordinate X=500, 895.11; Y=530, 064.83. The origin of this coordinate is T.V.A. concrete monument designated as HR 371.3. Thence with the existing corporate limits the following 22 courses and running with the East line of Valley Village Shopping Center the following seven courses: North 25 degrees 33 minutes East 97.70

feet; North 88 degrees 42 minutes East 45.0 feet; North 32 21 minutes East 200.10 feet; North 09 degrees 06 minutes West 62.50 feet; North 39 degrees 14 minutes East 353.0 feet; North 09 degrees 23 minutes West 280.01 feet; and North 11 degrees 35 minutes West 275.40 feet to the Northeast corner of Valley Village Shopping Center on the Southern right of way 30 feet from the centerline of Valley River Avenue; thence North 13 degrees 36 minutes West 19.81 feet to a point on the South margin of Valley River Avenue, thence crossing Valley River Avenue North 35 degrees 04 minutes West 25.0 feet to the North margin of Valley River Avenue, thence North 35 degrees 04 minutes West 300.0 feet to a point, thence with a line parallel to the centerline of Valley River Avenue South 54 degrees 56 minutes West 600.0 feet to a point, thence North 35 degrees 04 minutes West 325.0 feet to a point, thence in a Southwesterly direction paralleling the centerline of Valley River Avenue and U.S. 19 and 129 Business the following eight courses: South 54 degrees 56 minutes West 1449.45 feet; South 53 degrees 26 minutes West 118.36 feet South 50 degrees 32 minutes West 136.04 feet; South 45 degrees 50 minutes West 159.31 feet; South 40 degrees 35 minutes West 159.43 feet; South 35 degrees 33 minutes West 156.01 feet; South 32 degrees 12 minutes West 146.81 feet; and South 30 degrees 34 minutes West 560.72 feet to a point in the West property line of the Saint Williams Catholic Church; thence with the West property line of Saint Williams Catholic church and the East line of Ramsey North 55 degrees 56 minutes West 477.12 feet to a point, a common corner of Payne, Ramsey, and Saint Williams Catholic Church: thence with the line of Payne the following course: North 56 degrees 06 minutes West 113.75 feet; thence with the line of Witherspoon and the Saint Williams Catholic Church one course: South 82 degrees 16 minutes East 116.59 feet to a point on the approximate centerline of the Ridge separating Pleasant Valley and Valley River thence with the centerline of said Ridge in a Northeasterly direction approximately 4,500 feet to a point in the centerline of said Ridge, said point being the Northern most corner of the Smith Property, said point having (TVA) Grid Coordinate X=501,177.08; Y=532,867.95. The origin of this coordinate is (TVA) monument "HR 370-1". Thence leaving said Ridge with a line common to Smith and Swaim South 44 degrees 46 minutes East 580.46 feet to a point in the centerline of a gravel Access road said point having TVA Grid coordinate X=501,585.85; Y=532,455.83. The origin of this coordinate is TVA monument "HR 370-1", thence with the centerline of said Access road in a Northeasterly direction approximately 200 feet to a point in the centerline of Secondary Road 1368 at its intersection with the aforementioned Access road said point having a North Carolina

Geodetic Survey (N.C.G.S.) coordinate $X=501,641.41$; $Y=532,651.42$. The origin of this coordinate is N.C.G.S. monument "Harmony" (1985). Thence with the centerline of Secondary Road 1368 approximately 940 feet to a point in the centerline of Secondary road 1368 at its intersection with Business 19 and 129 and the Access Road to By-Pass 19 and 129. Thence with the centerline of Business 19 and 129 in a Northeasterly direction approximately 725 feet to a point in the approximate centerline of Business 19 and 129. Said point having N.C.G.S. Grid Coordinate $X=503,068.72$; $Y=533,176.77$ thence leaving said centerline and running with a straight line South 79 degrees 48 minutes East approximately 563 feet to a point in the centerline of Valley River, thence Southward, in the centerline and with the flow of Valley River, an approximate distance of 6,000 feet to a point in the centerline of said Valley River thence leaving said centerline of said River North 25 degrees 33 minutes East approximately 50 feet to the point of beginning, containing plus or minus 220 acres.

Sec. 2. This act shall become effective June 30, 1987.

In the General Assembly read three times and ratified this the 2nd day of June, 1987.

H.B. 496

CHAPTER 256

AN ACT TO EXTEND THE CORPORATE LIMITS OF THE
TOWN OF RANLO TO INCLUDE TOWN-OWNED
PROPERTY.

The General Assembly of North Carolina enacts:

Section 1. In addition to the corporate limits of the Town of Ranlo, in Gaston County, as now constituted, the corporate limits of the said town are hereby extended and enlarged to include the following:

Tract 1. Beginning at an existing fence corner, said fence corner being the Southwest corner of property of James Widner described in that certain deed recorded in Deed Book 1288 at Page 348 in the office of the Register of Deeds for Gaston County and runs thence from said point 0 - beginning North 51 degrees 47 minutes 19 seconds West 777.85 feet along the eastern margin of property of George Hardy (Deed Book 980 - page 397) to a new iron pin, northeast corner of George Hardy; thence a new line North 64 degrees 14 minutes 37 seconds East 682.21 feet to a new iron pin; thence South 83 degrees 34 minutes 27 seconds East 865.45 feet to a new iron pin in the western margin of the South Fork Catawba River; thence South 33

degrees 13 minutes east 710 feet along the western edge of the South Fork Catawba River to an existing iron pin, southeast corner of property of James Widner (Deed Book 1288 at Page 344); thence North 83 degrees 34 minutes 27 seconds west 874.94 feet along the northern margin of property of M. Phillip Petty (Deed Book 930 at Page 242) to a Poplar tree; thence continuing along the northern margin of the property M. Phillip Petty south 64 degrees 14 minutes west 424.98 feet to the point of BEGINNING, containing 19.805 acres.

Sec. 2. Immediately upon ratification of this act, the Town of Ranlo Town Clerk shall cause the appropriate changes to be made to the official map of the Town, which G.S. 160A-22 requires to be retained permanently in the office of the Town Clerk. A copy of the revised map, or an accurate map of the annexed territory, shall be filed in the offices of the Secretary of State, the Gaston County Register of Deeds and the appropriate Board of Elections.

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 2nd day of June, 1987.

H.B. 497

CHAPTER 257

AN ACT TO EXTEND THE CORPORATE LIMITS OF THE TOWN OF DALLAS, NORTH CAROLINA.

The General Assembly of North Carolina enacts:

Section 1. In addition to the corporate limits of the Town of Dallas, in Gaston County, as not constituted, the corporate limits of the said town are hereby extended and enlarged to include the following:

Tract 1 contains 10.261 acres and is located on the south side of N.C. 275 and on the west side of the South Fork River with the following metes and bounds.

Beginning at a new point on the south side of N.C. 275 and on the west side of the South Fork River and said point being S56-36-48W 637.63 feet from the center of the South Fork River and runs thence S33-23-52E 750 feet to a new iron pin; thence S6-49-09W 208.1 feet to a new iron pin; thence S85-18W 730 feet to a existing iron pin; thence N14-39-28W 423.7 feet to an existing iron pin; thence N58-40-05E to an existing iron pin; thence N17-48-14W 181.48 to an existing iron pin on right-of-way of N.C. 275; and thence running with the right-of-way of N.C. 275 N56-36-08E 100 feet to beginning point. Contains 10.261 acres and was part of property owned by J. K. Lewis.

Tract 2 contains 3.798 acres and is located on the north side of N.C. 275 and on the west side of the South Fork River with the following metes and bounds.

Beginning at a point on the north side of the right-of-way of N.C. 275 and said point being S55-34W 360 feet from the center of the South Fork River bridge and runs thence N42-37-00W 550.16 feet to a new iron pin; thence N49-34E 284.23 feet to a point on the river bank; thence S44-16-51E 582.85 feet along the river bank to a point on the right-of-way of N.C. 275 and; thence S55-34W 304.05 feet along N.C. 275 right-of-way to the beginning point. Contains 3.798 acres and was part of property owned by Lousie S. Watts.

Sec. 2. Immediately upon ratification of this act, the Town of Dallas Town Clerk shall cause the appropriate changes to be made to the official map of the Town, which G.S. 160A-22 requires to be retained permanently in the office of the Town Clerk. A copy of the revised map, or an accurate map of the annexed territory, shall be filed in the offices of the Secretary of State, the Gaston County Register of Deeds and the appropriate Board of Elections.

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 2nd day of June, 1987.

H.B. 502

CHAPTER 258

AN ACT TO ALLOW THE TOWNS OF KILL DEVIL HILLS, KITTY HAWK, MANTEO, NAGS HEAD, AND SOUTHERN SHORES TO IMPOSE FACILITY FEES FOR POLICE DEPARTMENT CAPITAL IMPROVEMENTS.

The General Assembly of North Carolina enacts:

Section 1. Section 2(2) of Chapter 536, Session Laws of 1985 reads as rewritten:

"(2) 'Community service facilities' means the following public facilities or improvements provided or established by the local government or in conjunction with other units of government: streets and drainage projects, open space and water access projects, emergency refuge shelters, police department capital improvements, and fire department capital improvements."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 2nd day of June, 1987.

H.B. 526

CHAPTER 259

AN ACT TO INCREASE THE CORPORATE LIMITS OF THE TOWN OF POLKVILLE.

The General Assembly of North Carolina enacts:

Section 1. Section 2.1(a) of the Charter of the Town of Polkville, being Section 12 of Chapter 178, Session Laws of 1971, reads as rewritten:

"(a) ~~For the purposes of conducting the special election on the question of incorporation and for the election of Town Commissioners and for all other purposes, the~~ The corporate boundaries of the Town of Polkville shall be as follows until changed in accordance with law: All of the area lying and being within a circle with a radius of ~~3/4's~~ one and one-half miles, with the center of said circle being at a point in the center of North Carolina Highway #226 where it intersects with the center of North Carolina Highway #182."

Sec. 2. This act shall become effective June 30, 1987.

In the General Assembly read three times and ratified this the 2nd day of June, 1987.

H.B. 720

CHAPTER 260

AN ACT TO INCREASE THE FEE FOR EXAMINATION BY THE BOARD OF PHARMACY.

The General Assembly of North Carolina enacts:

Section 1. G.S. 90-85.24 reads as rewritten:

"§ 90-85.24. *Fees collectible by Board.*--The Board of Pharmacy shall be entitled to charge and collect not more than the following fees: for the examination of an applicant for license as a pharmacist, ~~seventy-five dollars (\$75.00)~~ one hundred fifty dollars (\$150.00); for renewing the license as a pharmacist, ~~forty dollars (\$40.00)~~ forty dollars (\$40.00); for renewing the license of an assistant pharmacist, ten dollars (\$10.00); for licenses without examination as provided in G.S. 90-85.20, original, two hundred dollars (\$200.00); for original registration of a drugstore, two hundred dollars (\$200.00), and renewal thereof, one hundred dollars (\$100.00). All fees shall be paid before any applicant may be admitted to examination or his name placed upon the register of pharmacists or before any license or permit, or any renewal thereof, may be issued by the Board."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 2nd day of June, 1987.

H.B. 884

CHAPTER 261

AN ACT TO ALLOW THE TOWN OF AHOSKIE TO LEVY
SPECIAL ASSESSMENTS FOR STREET OR SIDEWALK
IMPROVEMENTS.

The General Assembly of North Carolina enacts:

Section 1. Notwithstanding the provisions of G.S. 160A-217 (a), the Town of Ahoskie may levy special assessments for street or sidewalk improvements if it receives a petition for the improvements signed by either a majority in number of the owners of property to be assessed, or by the owners of a majority of all the lineal feet of frontage of the lands abutting on the street or portion thereof to be improved.

Sec. 2. All other provisions of Chapter 160A, Article 10 of the General Statutes concerning special assessments shall remain in effect as to the Town of Ahoskie.

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 2nd day of June, 1987.

H.B. 885

CHAPTER 262

AN ACT TO AMEND THE CHARTER OF THE TOWN OF
AHOSKIE.

The General Assembly of North Carolina enacts:

Section 1. The Charter of the Town of Ahoskie, being Chapter 609, Session Laws of 1963, is amended by rewriting Sections 9.4 and 9.5 to read:

"Sec. 9.4. *Assessment for Sidewalk Improvements; Petition Unnecessary.* In addition to any authority granted by general law, the Board is hereby authorized, without the necessity of petition, to order sidewalk improvements or repairs according to standards and specifications of the Town, and to assess the total costs thereof against abutting property, according to one or more of the assessment bases set forth in Article 10 of Chapter 160A of the General Statutes; provided that regardless of the assessment basis or bases employed, the Board may order the costs of sidewalk improvements made only on one side of a street to be assessed against property abutting both sides of such street.

"Sec. 9.5. *Procedure; Effect of Assessments.* In ordering street and sidewalk improvements without a petition and assessing the costs thereof under authority of this Article, the Board shall comply with the procedures required by Article 10 of Chapter 160A of the General Statutes, except those provisions relating to petitions of property owners and sufficiency thereof. The effect of the act of levying assessments under authority of this Article shall be the same as if assessments were levied under authority of Article 10 of Chapter 160A of the General Statutes.

Sec. 2. The Charter of the Town of Ahoskie is further amended by adding a new section to read:

"Sec. 16.3. *Acceptance of Conveyance of Real Property for Liens.* Despite G.S. 105-357 (a) and other provisions of law, the Board, by resolution, may accept conveyance of real property on which the Town has a lien, in full or partial satisfaction of the tax, special assessment, or other charge or liability underlying the lien, including the expense of transferring title to the Town. The resolution shall order the lien cancelled of record, or reduced to the extent the liability underlying the lien is satisfied. Acceptance of conveyance by the Town does not affect a lien on the property held by a person or entity other than the Town. Property conveyed to the Town under this section may be disposed of subsequently by the Town under any of the methods provided in Article 12 of G.S. Chapter 160A, including private sale under G.S. 160A-267."

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 2nd day of June, 1987.

H.B. 1005

CHAPTER 263

AN ACT TO EXPAND THE MEMBERSHIP OF THE LIABILITY INSURANCE TRUST FUND COUNCIL AND TO INCREASE ITS BORROWING AUTHORITY.

The General Assembly of North Carolina enacts:

Section 1. G.S. 116-220(c) reads as rewritten:

"(c) The Board is authorized to create a Liability Insurance Trust Fund Council composed of not more than ~~12 members~~ 13 members; one member each shall be appointed by the State Attorney General, the State Auditor, the State Insurance Commissioner, the Director of the Office of State Budget and Management, and the State Treasurer; the remaining members shall be appointed by the Board. Subject to all requirements and limitations of this Article and to any rules and

regulations adopted by the Board under the terms of subsection (b) of this section, the Board may delegate to the Liability Insurance Trust Fund Council responsibility and authority for the administration of the self-insured liability insurance program and of the insurance trust accounts established pursuant to such program."

Sec. 2. G.S. 116-220.1 reads as rewritten:

"(b) Claims certified to be paid from the fund shall be paid in the order of award or settlement. In the event that the fund created hereunder shall at any time have insufficient funds to assure that both existing and future claims will be paid, the Board is hereby authorized to borrow necessary amounts up to five million dollars (\$5,000,000) thirty million dollars (\$30,000,000) per established self-insurance trust fund account to replenish the fund. The Board shall maintain funds in each self-insurance trust at no less than one hundred thousand dollars (\$100,000) at all times."

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 2nd day of June, 1987.

H.B. 332

CHAPTER 264

AN ACT TO CHANGE THE SUNSET AND OTHER PROVISIONS
OF THE LAW REGARDING DAMAGES TO CERTAIN
PERSONAL PROPERTY.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143-127.5 as contained in Section 1 of Chapter 393 of the 1985 Session Laws reads as rewritten:

"§ 143-127.5. *Limitations.*--Reimbursement shall be limited to the amount specified in the rules and shall not exceed a maximum of two hundred dollars (\$200.00) per incident. No employee, volunteer, or client shall receive more than five hundred dollars (\$500.00) per year in reimbursement. Reimbursement is subject to the availability of funds."

Sec. 2. G.S. 143-127.6 as contained in Section 1 of Chapter 393 of the 1985 Session Laws reads as rewritten:

"§ 143-127.6. *Appeals.*--The Secretary of Human Resources shall establish by rule an appeals process consistent with Chapter 150A 150B of the General Statutes."

Sec. 3. The Secretary of Human Resources shall submit a report to the General Assembly by March 1, 1989, on the implementation of Chapter 393 of the 1985 Session Laws. The report shall include all the reported incidents, the total amount of funds expended, the amount expended per incident, and the types of property

damaged or stolen for which reimbursement was granted. This report shall also include incidents related to private passenger vehicles.

Sec. 4. Section 3 of Chapter 393, 1985 Session Laws, reads as rewritten:

"Sec. 3. This act shall become effective October 1, 1985, and shall apply only to acts occurring after that date. This act shall expire July 1, ~~1987~~ 1989."

Sec. 5. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 2nd day of June, 1987.

H.B. 387

CHAPTER 265

AN ACT TO PROVIDE THE CITIES OF STATESVILLE AND MORGANTON WITH AUTHORITY TO ACQUIRE PROPERTY FOR A POST OFFICE BY EMINENT DOMAIN, AND TRANSFER THAT PROPERTY TO THE UNITED STATES POSTAL SERVICE BY PRIVATE LEASE OR SALE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 40A-3(b) is amended by adding a new subdivision to read:

"(6a) Constructing, enlarging, or improving post offices for use by the United States Postal Service."

Sec. 2. Chapter 160A of the General Statutes is amended by adding a new section to read:

"§ 160A-274.1. *Private sale or lease to U.S. Postal Service.*--Notwithstanding G.S. 160A-266(b), and G.S. 160A-272, a city may convey at private sale or private lease to the United States Postal Service any or all of its interest in property for use as a post office."

Sec. 3. This act applies to the Cities of Statesville and Morganton only.

Sec. 4. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 2nd day of June, 1987.

H.B. 468

CHAPTER 266

AN ACT TO AUTHORIZE THE USE OF HORNS AND WARNING DEVICES ON MOTOR VEHICLES BY THE DIVISION OF MARINE FISHERIES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-125(b) reads as rewritten:

"(b) Every vehicle owned and operated by a police department or by the Department of Crime Control and Public Safety including the State Highway Patrol or by the Wildlife Resources Commission or the Division of Marine Fisheries and used exclusively for law enforcement purposes, or by a fire department, either municipal or rural, or by a fire patrol, whether such fire department or patrol be a paid organization or a voluntary association, vehicles designed, equipped and used exclusively for the transportation of human tissues and organs for transplantation, and every ambulance used for answering emergency calls, shall be equipped with special lights, bells, sirens, horns or exhaust whistles of a type approved by the Commissioner of Motor Vehicles.

The operators of all such vehicles so equipped are hereby authorized to use such equipment at all times while engaged in the performance of their duties and services, both within their respective corporate limits and beyond.

In addition to the use of special equipment authorized and required by this subsection, the chief and assistant chiefs of any police department or of any fire department, whether the same be municipal or rural, paid or voluntary, county fire marshals, assistant fire marshals, and emergency management coordinators, are hereby authorized to use such special equipment on privately owned vehicles operated by them while actually engaged in the performance of their official or semiofficial duties or services either within or beyond their respective corporate limits.

And vehicles driven by inspectors in the employ of the North Carolina Utilities Commission shall be equipped with a bell, siren, or exhaust whistle of a type approved by the Commissioner, and all vehicles owned and operated by the State Bureau of Investigation for the use of its agents and officers in the performance of their official duties may be equipped with special lights, bells, sirens, horns or exhaust whistles of a type approved by the Commissioner of Motor Vehicles.

Every vehicle used or operated for law enforcement purposes by the sheriff or any salaried deputy sheriff or salaried rural policeman of any county, whether owned by the county or not, may be, but is not required to be, equipped with special lights, bells, sirens, horns or exhaust whistles of a type approved by the Commissioner of Motor Vehicles. Such special equipment shall not be operated or activated by any person except by a law enforcement officer while actively engaged in performing law enforcement duties.

In addition to the use of special equipment authorized and required by this subsection, the chief and assistant chiefs of each emergency rescue squad which is recognized or sponsored by any municipality or civil preparedness agency, are hereby authorized to use such special equipment on privately owned vehicles operated by them while actually engaged in their official or semiofficial duties or services either within or beyond the corporate limits of the municipality which recognizes or sponsors such organization."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 2nd day of June, 1987.

H.B. 514

CHAPTER 267

AN ACT TO AMEND G.S. 130A-335 (c) AND (d) CONCERNING APPROVAL OF LOCAL BOARD OF HEALTH SANITARY SEWAGE SYSTEM RULES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 130A-335(c) is amended by redesignating subsection (2) as subsection (3) and by inserting the following as a new subsection (2):

"(2) The local board of health has adopted by reference the sanitary sewage system rules adopted by the Commission, with any more stringent modifications or additions deemed necessary by the local board of health to protect the public health; and".

Sec. 2. G.S. 130A-335(d) is amended by adding the following at the end of the subsection: "The Department shall review its findings under subsection (c) of this section upon modification of the Commission's sanitary sewage system rules. The Department may deny, suspend, or revoke the approval of local board of health sanitary sewage system rules upon a finding that the local sewage rules are not as stringent as the Commission's rules, are not sufficient and necessary to safeguard the public health, or are not being enforced. Suspension and revocation of approval shall be in accordance with G.S. 130A-23."

Sec. 3. Local board of health sanitary sewage system rules approved by the Department on or before the effective date of this act shall remain approved until approval is suspended or revoked in accordance with this act.

Sec. 4. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 2nd day of June, 1987.

AN ACT TO PROVIDE FOR TRANSPORTATION OF CERTAIN PERSONS IN ADMISSION AND COMMITMENT PROCEEDINGS UNDER CHAPTER 122C OF THE GENERAL STATUTES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 122C-251(b) reads as rewritten:

"(b) Except as provided in subsections (f) and (g) or in G.S. 122C-408(b), transportation between counties under the involuntary commitment proceedings of this Article for admission to a 24-hour facility shall be provided by the county where the respondent is taken into custody. Transportation between counties under the involuntary commitment proceedings of this Article for respondents held in 24-hour facilities who have requested a change of venue for the district court hearing shall be provided by the county where the petition for involuntary commitment was initiated. Transportation between counties under the involuntary commitment proceedings of this Article for discharge of a respondent from a 24-hour facility shall be provided by the county of residence of the respondent. However, a respondent being discharged from a facility may use his own transportation at his own expense."

Sec. 2. This act shall become effective July 1, 1987.

In the General Assembly read three times and ratified this the 2nd day of June, 1987.

AN ACT TO MINIMIZE THE LEGAL LIABILITY OF GOOD SAMARITANS ASSISTING IN PREVENTING OR CLEANING UP DISCHARGES OF HAZARDOUS MATERIALS.

The General Assembly of North Carolina enacts:

Section 1. Article 21A of Chapter 143 of the General Statutes is amended by adding a Part after Part 4. to read:

"Part 5. Limitation On Liability For Hazardous Materials Abatement.

"§ 143-215.103. *Definitions.*--As used in this Part, unless the context otherwise requires:

- (1) 'Discharge' shall mean leakage, seepage, or other release.
- (2) 'Hazardous materials' shall mean oil, low-level radioactive waste, and all materials and substances which are now or hereafter defined as toxic or hazardous by any State or federal law or by the

regulations of any State or federal government agency.

(3) 'Person' shall mean any individual, partnership, corporation, association, or other entity or employee thereof.

"§ 143-215.104. *Limited liability for volunteers in hazardous material abatement.*--Any person who provides assistance or advice in mitigating or attempting to mitigate the effects of an actual or threatened discharge of hazardous materials, or in preventing, cleaning up, or disposing of or in attempting to prevent, clean up or dispose of any such discharge, when the reasonably apparent circumstances indicate the need for prompt decisions and action, shall not be subject to civil liabilities of any type, unless:

(1) prior to providing assistance or advice in mitigating or attempting to mitigate the effects of an actual or threatened discharge or in preventing, cleaning up, or disposal of or in attempting to prevent cleanup or disposal of any such discharge, he had incurred liability for the actual or threatened discharge;

(2) he receives compensation other than reimbursement for out-of-pocket expenses for his services in rendering assistance or advice, except that an individual receiving compensation for employment from his regular employer for services performed in preventing, cleaning up, or disposing of or in attempting to prevent, clean up or dispose of a discharge shall not be deemed to have received compensation if his employer is entitled to the protection afforded by this Part; or

(3) his act or omission led to damages resulting from his gross negligence, or from his reckless, wanton, or intentional misconduct.

The limited immunity provided herein shall not be applicable to any act or omission or occurrence involving the operation of a motor vehicle. The limited immunity provided herein is waived to the extent of any indemnification by insurance for damages caused by such volunteer."

Sec. 2. G.S. 130A-22 is amended by adding a subsection after subsection (a) to read:

"(a1) Part 5 of Article 21A of Chapter 143 of the General Statutes shall apply to the determination of civil liability or penalty pursuant to subsection (a) of this section."

Sec. 3. A new section is added to Chapter 143 of the General Statutes to read:

"§ 143-215.91A. *Limited liability for volunteers in oil and hazardous substance abatement.*--Part 5 of this Article shall apply to the determination of civil liability or penalty pursuant to this Article."

Sec. 4. A new section is added to Chapter 104E of the General Statutes to read:

"§ 104E-25. *Limited liability for volunteers in low-level radioactive waste abatement.*--Part 5 of Article 21A of Chapter 143 of the General Statutes shall apply to civil liability and penalties pursuant to this Chapter."

Sec. 5. This act is effective upon ratification and shall apply to causes of action arising after the date of ratification.

In the General Assembly read three times and ratified this the 2nd day of June, 1987.

H.B. 805

CHAPTER 270

AN ACT TO ESTABLISH PENALTIES FOR FAILURE TO REMOVE PROHIBITED DISCHARGES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143-215.91(a) reads as rewritten:

"(a) Civil Penalties. Any person who intentionally or negligently discharges oil or other hazardous substances, or knowingly causes or permits the discharge of oil in violation of this Part or fails to report a discharge as required by G.S. 143-215.85 or who fails to comply with the requirements of G.S. 143-215.84(a) or orders issued by the Commission as a result of violations thereof, shall incur, in addition to any other penalty provided by law, a penalty in an amount not to exceed five thousand dollars (\$5,000) for every such violation, the amount to be determined by the Environmental Management Commission after taking into consideration the gravity of the violation, the previous record of the violator in complying or failing to comply with the provisions of this Part as well as G.S. 143-215.1, the amount expended by the violator in complying with the provisions of G.S. 143-215.84, the estimated damages attributed to the violator under G.S. 143-215.90, and such other considerations as the Environmental Management Commission deems appropriate. Every act or omission which causes, aids or abets a violation of this section shall be considered a violation under the provisions of this section and subject to the penalty herein provided. The penalty herein provided for shall become due and payable when the person incurring the penalty receives a notice in writing from the Environmental Management Commission describing the violation with reasonable particularity and advising such person that the penalty is due. The Environmental Management Commission may, upon written application therefor, receive within 15 days, and when deemed in the best interest of the State in carrying out the purposes of this Article, remit or mitigate any

penalty provided for in this section or discontinue any action to recover the penalty upon such terms as it, in its discretion, shall deem proper, and shall have the authority to ascertain facts upon all such applications in such manner and under such regulations as the Environmental Management Commission may adopt. If the amount of such penalty is not paid to the Department within 15 days after receipt of notice, or if an application for remission or mitigation has not been made within 15 days as herein provided, and the amount provided in the order issued by the Environmental Management Commission subsequent to such application is not paid within 15 days of receipt thereof, the Attorney General, upon request of the Environmental Management Commission, shall bring an action in the name of the State in the Superior Court of Wake County or of any other county wherein such violator does business, to recover the amount specified in the final order of the Environmental Management Commission. In any such action, the amount of the penalty shall be subject to review by the court. In all such actions the procedures and rules of evidence shall be the same as in an ordinary civil action except as otherwise in this Article provided. Notification received pursuant to this subsection or information obtained by the exploitation of such notification shall not be used against any person in any criminal case, except as prosecution for perjury or for giving a false statement."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 2nd day of June, 1987.

H.B. 806

CHAPTER 271

AN ACT TO ESTABLISH PENALTIES FOR PROHIBITED DISCHARGES IN VIOLATION OF G.S. 143-214.2.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143-215.6(a)(1)a. reads as rewritten:

"a. Violates any classification, standard, limitation or management practice established pursuant to G.S. 143-214.1, 143-214.2, or 143-215."

Sec. 2. G.S. 143-215.6(b)(1) reads as rewritten:

"(1) Any person who willfully or negligently violates any classification, standard or limitation established pursuant to G.S. 143-214.1, 143-214.2, or 143-215; any term, condition, or requirement of a permit issued pursuant to G.S. 143-215.1 or of a special order or other appropriate document issued pursuant to G.S. 143-215.2; or any regulation of the Environmental Management

Commission implementing any of the said sections, shall be guilty of a misdemeanor punishable by a fine not to exceed fifteen thousand dollars (\$15,000) per day of violation, provided that such fine shall not exceed a cumulative total of two hundred thousand dollars (\$200,000) for each period of 30 days during which a violation continues, or by imprisonment not to exceed six months, or by both."

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 2nd day of June, 1987.

H.B. 993

CHAPTER 272

AN ACT RELATING TO THE USE OF SADDLE MOUNTS IN TRANSPORTING MOTOR VEHICLES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-116(e) reads as rewritten:

"(e) Except as provided by G.S. 20-115.1, no combination of vehicles coupled together shall consist of more than two units and no such combination of vehicles shall exceed a total length of 60 feet inclusive of front and rear bumpers, subject to the following exceptions: Said length limitation shall not apply to vehicles operated in the daytime when transporting poles, pipe, machinery or other objects of a structural nature which cannot readily be dismembered, nor to such vehicles transporting such objects operated at nighttime by a public utility when required for emergency repair of public service facilities or properties, but in respect to such night transportation every such vehicle and the load thereon shall be equipped with a sufficient number of clearance lamps on both sides and marker lamps upon the extreme ends of said projecting load to clearly mark the dimensions of such load: Provided that vehicles designed and used exclusively for the transportation of motor vehicles shall be permitted an overhang tolerance front or rear not to exceed five feet. Provided, that wreckers in an emergency may tow a combination tractor and trailer to the nearest feasible point for repair and/or storage: Provided, however, that a combination of a house trailer used as a mobile home, together with its towing vehicle, shall not exceed a total length of 55 feet exclusive of front and rear bumpers. Provided further, that the said limitation that no combination of vehicles coupled together shall consist of more than two units shall not apply to trailers not exceeding three in number drawn by a motor vehicle used by municipalities for the removal of domestic and commercial refuse and street rubbish, but such combination of vehicles shall not exceed a

total length of 50 feet inclusive of front and rear bumpers. Provided further, that the said limitation that no combination of vehicles coupled together shall consist of more than two units shall not apply to a combination of vehicles coupled together by a saddle mount device used to transport motor vehicles in a driveway service when no more than ~~two~~ three saddle mounts are used and provided further, that equipment used in said combination is approved by the safety regulations of the Interstate Commerce Commission and the safety regulations of the North Carolina Division of Motor Vehicles and the Department of Transportation."

Sec. 2. This act shall become effective July 1, 1987.

In the General Assembly read three times and ratified this the 2nd day of June, 1987.

S.B. 400

CHAPTER 273

AN ACT TO PROVIDE FOR AN AMENDMENT TO THE EMPLOYMENT SECURITY LAW.

The General Assembly of North Carolina enacts:

Section 1. G.S. 96-4(c) reads as rewritten:

"(c) Publication. The Commission shall cause to be printed for distribution to the public the text of this Chapter, the Commission's regulations and general rules, ~~its biennial reports to the Governor,~~ and any other material the Commission deems relevant and suitable, and shall furnish the same to any person upon application therefor. All publications printed shall comply with the requirements of G.S. 143-170.1."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 3rd day of June, 1987.

S.B. 501

CHAPTER 274

AN ACT TO EXPAND THE DEPARTMENT OF ADMINISTRATION'S AUTHORITY TO REMOVE UNAUTHORIZED VEHICLES FROM ALL STATE-OWNED PUBLIC GROUNDS WITHIN THE DEPARTMENT'S JURISDICTION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143-340(19) reads as rewritten:

"(19) Any motor vehicle parked in a State-owned parking lot, when such lot is clearly designated as such by a sign no smaller than 24 inches by 24 inches prominently displayed at the entrance thereto, in

violation of the 'Rules and Regulations Governing State-Owned Parking Lots' dated September, 1968 or as amended, may be removed from such lot to a place of storage and the registered owner of that vehicle shall become liable for removal and storage charges. No person shall be held to answer in any civil or criminal action to any owner, lienholder, or other person legally entitled to the possession of any motor vehicle removed from such lots pursuant to this section except where such motor vehicle is wilfully, maliciously or negligently damaged in the removal from aforesaid lot to place of storage. Any motor vehicle parked without authorization on State-owned public grounds ~~within the City of Raleigh~~ under the control of the Department of Administration other than a designated parking area may be removed from that property to a storage area and the registered owner of the vehicle shall be liable for removal and storage fees."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 3rd day of June, 1987.

S.B. 496

CHAPTER 275

AN ACT TO AMEND THE ENABLING LEGISLATION OF THE NORTH CAROLINA STATE PORTS AUTHORITY TO MAKE CERTAIN TECHNICAL AND CONFORMING AMENDMENTS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143B-454(5) is amended by deleting the first two sentences and substituting the following sentence: "The Secretary of Commerce with the approval of the Authority shall appoint an Executive Director, whose salary shall be fixed by the General Assembly in the Current Operations Appropriations Act, to serve at his pleasure."

Sec. 2. G.S. 143B-454(9) is rewritten to read:

"(9) Be authorized and empowered to apply for and accept loans and grants of money from any federal agency or the State of North Carolina or any political subdivision thereof or from any public or private sources available for any and all of the purposes authorized in this Article, and to expend the same in accordance with the directions and requirements attached thereto, or imposed thereon by any such federal agency, the State of North Carolina, or any political subdivision thereof, or any public or private lender or donor, and to give such evidences of indebtedness as shall be required, provided, however, that no indebtedness of any kind incurred or created by the

Authority shall constitute an indebtedness of the State of North Carolina, or any political subdivision thereof, and no such indebtedness shall involve or be secured by the faith, credit or taxing power of the State of North Carolina, or any political subdivision thereof."

Sec. 3. G.S. 143B-456(a) is amended by rewriting the last sentence to read: "Such bonds or notes shall mature at such time or times not exceeding 40 years from their date or dates, as may be determined by the Authority."

Sec. 4. G.S. 143B-459 is repealed.

Sec. 5. G.S. 143B-461(d) is amended by deleting the word "chairman" in the first sentence and substituting the words "Executive Director".

Sec. 6. G.S. 143B-465 is rewritten to read:

"§ 143B-465. *Purchase of supplies, material and equipment and building contracts.*--All of the provisions of Article 3 of Chapter 143 of the General Statutes relating to the purchase of supplies, material and equipment by the State government are hereby made applicable to the North Carolina State Ports Authority. All of the provisions of Chapter 143 of the General Statutes relating to public building contracts are hereby made applicable to the North Carolina State Ports Authority for those construction projects which may be funded, in whole or in part, by appropriations from the General Assembly."

Sec. 7. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 4th day of June, 1987.

S.B. 573

CHAPTER 276

AN ACT TO REQUIRE THAT SCHOOL BUS DRIVERS BE AT LEAST SEVENTEEN YEARS OLD.

The General Assembly of North Carolina enacts:

Section 1. G.S. 115C-245(a) reads as rewritten:

"(a) Each local board, which elects to operate a school bus transportation system, shall employ the necessary drivers for such school buses. The drivers shall have all qualifications prescribed by the regulations of the State Board of Education herein provided for and must be at least 17 years old and have at least six months driving experience as a licensed operator of a motor vehicle before employment as a regular or substitute driver, but the selection and employment of each driver shall be made by the local board of education, and the driver shall be the employee of such local school administrative unit. Each local board of education shall assign the bus

drivers employed by it to the respective schools within the jurisdiction of such board, and the principal of each such school shall assign the drivers to the school buses to be driven by them. No school bus shall at any time be driven or operated by any person other than the bus driver assigned by such principal to such bus except by the express direction of such principal or in accordance with rules and regulations of the appropriate local board of education."

Sec. 2. This act shall become effective January 1, 1988.

In the General Assembly read three times and ratified this the 4th day of June, 1987.

H.B. 194

CHAPTER 277

AN ACT TO VALIDATE CERTAIN CONVEYANCES WHERE SEALS WERE OMITTED OR NOTARY WAS NOT QUALIFIED, CERTAIN NOTICES TO CREDITORS OF DECEDENTS WHERE THE DEADLINE FOR SUBMITTING CLAIMS WAS OMITTED AND CERTAIN FORECLOSURE SALES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 45-20.1 is amended by deleting "1985" and substituting "1987".

Sec. 2. G.S. 47-51 is amended by deleting "1985" and substituting "1987".

Sec. 3. G.S. 47-53 is amended by deleting "1985" and substituting "1987".

Sec. 4. G.S. 47-53.1 is amended by deleting "1985" and substituting "1987".

Sec. 5. G.S. 47-71.1 is amended by deleting "1985" in the catch line and in the text and substituting "1987".

Sec. 6. G.S. 47-108.5 is amended by deleting "1985" and substituting "1987".

Sec. 7. G.S. 47-108.11 is amended in the second paragraph by deleting "1985" and substituting "1987".

Sec. 8. G.S. 28A-14-1.1(b) reads as rewritten:

"(b) This section applies to all notices published and posted between October 1, 1975, and March 16, ~~1981~~ 1987, except that it does not affect any pending litigation or any litigation instituted within 90 days of March 16, ~~1981~~ 1987."

Sec. 9. G.S. 10-12(d) is amended by deleting "1985" and substituting "1987".

Sec. 10. G.S. 45-21.47 is amended by deleting "1985" each place it appears and substituting "1987" in each place.

Sec. 10a. Chapter 45 of the General Statutes is amended by adding a new section to read as follows:

"§ 45-21.49. *Validation of foreclosure sales when provisions of Section 45-21.16A(3) not complied with.*--(a) Whenever any real property was sold under a power of sale as provided in Article 2A of Chapter 45, and the notice of sale did not describe the improvements on the property to be sold, as required under G.S. 45-21.16A(3), the sale shall not be invalidated because of such omission.

(b) This section shall apply to all sales completed prior to June 1, 1987."

Sec. 11. This act is effective upon ratification, except for Sections 10 and 11 which are effective July 1, 1987, and shall not affect pending litigation.

In the General Assembly read three times and ratified this the 4th day of June, 1987.

H.B. 618

CHAPTER 278

AN ACT TO PROVIDE THAT PARK RANGERS EMPLOYED BY THE CITY OF HENDERSON HAVE THE SAME JURISDICTION AS THE CITY POLICE.

The General Assembly of North Carolina enacts:

Section 1. Section 26 of Chapter 780 of the 1967 Session Laws of North Carolina is amended by adding a new sentence to the end to read: "Park rangers appointed by the city manager and acting under the supervision of the City Parks and Recreation Department or the City-County Parks and Recreation Department shall have the same powers as the members of the city police department and shall have territorial jurisdiction to use those powers within or outside of the corporate limits of the City of Henderson on property and streets used by the City Parks and Recreation Department or the City-County Parks and Recreation Department."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 4th day of June, 1987.

H.B. 669

CHAPTER 279

AN ACT TO CLARIFY THE AUTHORITY OF THE BOARD OF DIRECTORS OF LENOX BAKER CHILDREN'S HOSPITAL.

The General Assembly of North Carolina enacts:

Section 1. G.S.131E-56(b) reads as rewritten:

"(b) The Board of Directors is authorized to accept and use donations to further the intent of this Article. Funds currently being held in the name of the Board and all private funds donated to the Hospital in the future are not required to be deposited with the State Treasurer, are not subject to the provisions of the Executive Budget Act, and may be invested and expended by the Board in its sole discretion. The Board's expenditure of these funds is not subject to approval of the Department of Human Resources or any other executive department or agency."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 4th day of June, 1987.

H.B. 691

CHAPTER 280

AN ACT TO AMEND THE CHARTER OF THE CITY OF DURHAM CONCERNING THE PROCEDURE FOR REMOVING THE MAYOR AND MEMBERS OF THE CITY COUNCIL FROM OFFICE.

The General Assembly of North Carolina enacts:

Section 1. Section 15(3)(a) of the Charter of the City of Durham, being Chapter 671, Session Laws of 1985, reads as rewritten:

"(a) Any elector of the City may make and file with the ~~City Clerk~~ Supervisor of Elections of the Board of Elections of Durham County an affidavit containing the name of the City officer whose removal is sought and a statement of the grounds alleged for his removal. The ~~Clerk~~ said Supervisor of Elections shall thereupon deliver to the elector making such affidavit copies of petition blanks for demanding such a removal, printed forms of which ~~he~~ the Supervisor of Elections shall keep on hand. Such blanks shall be issued by the ~~Clerk with his~~ Supervisor of Elections with his or her signature thereto attached and shall be dated and addressed to the ~~council~~ Board of Elections of Durham County, indicate the person to whom issued, and state the name of the officer whose removal is sought. A copy of the petition shall be promptly delivered to the city clerk who shall enter the copy of the petition entered in a record book kept for that purpose in the office of the Clerk. A recall petition to be effective must be returned and filed with the ~~Clerk~~ Supervisor of Elections within 30 days after the filing of the affidavit, and to be sufficient must bear the signature of at least twenty-five per centum (25%) of the registered voters of the

city equal in number to twenty-five percent (25%) of the registered voters of the City as shown by the registration ~~sheet~~ records of the last preceding general municipal election. ~~A recall petition, if insufficient as originally filed, may be amended as hereinafter provided."~~

Sec. 2. Section 15(3) of the Charter of the City of Durham, being Chapter 671, Session Laws of 1985, is amended by adding a new subparagraph to read:

"(a) It shall be the duty of the Board of Elections of Durham County to investigate the sufficiency of any such petition and to certify the results of such investigation to the city council. The Board of Elections may employ such persons as it deems necessary to undertake such investigation and the reasonable cost of such investigation shall be reimbursed to the Board of Elections by the city. The Board of Elections may adopt such rules and regulations as it deems necessary or advisable concerning the validation of signatures appearing on the recall petition, and such rules and regulations shall be available for public inspection consistent with Chapter 132 of the General Statutes."

Sec. 3. Section 15(3)(b) of the Charter of the City of Durham, being Chapter 671, Session Laws of 1985, reads as rewritten:

~~"(b) If a recall petition, or amended petition shall be certified by the Clerk Board of Elections to be sufficient he the Board shall at once submit it to the council with his its certificate to that effect and shall notify the officer whose removal is sought of such action. If the officer whose removal is sought does not resign within five days after such notice the Council shall thereupon order and fix a day for holding a recall election. Any such election shall be held not less than 40 nor more than 60 50 nor more than 70 days after the petition has been certified to the Council, and it may be held at the same time as any other general or special election within such period; but if no other election is to be held within such period the Council shall call a special recall election to be held within the time aforesaid, provided however, if the provisions of general law prohibit the holding of special elections during the time aforesaid, and no general or special election is otherwise scheduled during said period of time, then the council shall call said special recall election for some date within 10 days after the last day of said period of time during which special elections are prohibited by general law."~~

Sec. 4. Section 15(3)(f) of the Charter of the City of Durham, being Chapter 671, Session Laws of 1985, reads as rewritten:

"(f) If an officer in regard to whom a sufficient recall petition is submitted to the ~~Council~~ Board of Elections shall resign before the election, or be removed as a result thereof, the vacancy so caused

shall be filled in the manner provided by this charter for filling vacancies in such office, except as provided in Section 15(3)(h). But an officer removed by the voters as the result of a recall election, or resigning after a sufficient petition for his recall has been submitted to the Council Board of Elections shall not be reelected to fill the vacancy caused by his own removal or resignation."

Sec. 2. This act applies to the Durham County Board of Elections as well as to the City of Durham.

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 4th day of June, 1987.

H.B. 696

CHAPTER 281

AN ACT TO EXPAND THE ANSON COUNTY BOARD OF COMMISSIONERS FROM FIVE TO SEVEN MEMBERS, AND PROVIDE FOR THEIR NOMINATION AND ELECTION FROM DISTRICTS.

The General Assembly of North Carolina enacts:

Section 1. Effective on the first Monday in December of 1988, the Anson County Board of Commissioners shall consist of seven members.

Sec. 2. For the purpose of nominating and electing members of the county board of commissioners, Anson County is divided into seven districts, each of which shall nominate and elect one member as follows:

District 1 consists of Burnsville Township and Ansonville Township.

District 2 consists of Lilesville Township, excluding those portions of U.S. Census Enumeration District 277 which are in Anson County Precincts Wadesboro One or Wadesboro Three.

District 3 consists of Gullledge Township and Morven Township.

District 4 consists of Lanesboro Township and White Store Township and that portion of U.S. Census Enumeration District 287 which is within Anson County Precinct Lanesboro One.

District 5 consists of that portion of Wadesboro Township included within U.S. Census Enumeration Districts 286T, 286U and 290, and that portion of U.S. Census Enumeration District 277 which is within Anson County Precinct Wadesboro Three.

District 6 consists of that portion of Wadesboro Township included within U.S. Census Enumeration Districts 285 and 289.

District 7 consists of that portion of Wadesboro Township included within U.S. Census Enumeration Districts 284, 287 and 288, and that portion of U.S. Census Enumeration District 277 which is within Anson County Precinct Wadesboro One and excluding that portion of U.S. Census Enumeration District 287 which is within Anson County Precinct Lanesboro One.

Sec. 3. All townships referred to in this act are delineated as designated by the United States Bureau of the Census for the 1980 Census. All precincts referred to in this act are the precincts as designated by the Anson County Board of Elections on the date of ratification of this act.

Sec. 4. The qualified voters of each district established by this act shall nominate candidates and elect a member who resides in that district for the seat apportioned to that district.

Sec. 5. (a) In 1988 and quadrennially thereafter, members shall be elected from Districts 1, 3, 6 and 7 for four-year terms.

(b) In 1990 and quadrennially thereafter, members shall be elected from Districts 2, 4 and 5 for four-year terms.

Sec. 6. (a) Beginning on the first Monday of December 1988, the person then holding the seat for District 1 (Wadesboro Township) under Chapter 612, Public-Local Laws of 1939, for a term to expire in 1990, shall represent District 5 as established by Section 2 of this act until the first Monday in December 1990.

(b) Beginning on the first Monday of December 1988, the person then holding the seat for District 2 (Ansonville and Lilesville Townships) under Chapter 612, Public-Local Act of 1939, for a term to expire in 1990, shall represent District 2 as established by Section 2 of this act until the first Monday in December 1990.

(c) Beginning on the first Monday of December 1988, the person then holding the seat for District 4 (Burnsville, Lanesboro and White Store Townships) under Chapter 612, Public-Local Act of 1939, for a term to expire in 1990, shall represent District 4 as established by Section 2 of this act until the first Monday in December 1990.

Sec. 7. Chapter 612, Public-Local Laws of 1939, and Chapters 881 and 1128, Session Laws of 1949, are repealed.

Sec. 8. This act shall become effective on the first Monday in December 1988, except that Sections 2, 3, 4 and 5(a) shall become effective beginning with the 1988 primary and election, and no primary or elections shall be held under Chapter 612, Public-Local Laws of 1939.

In the General Assembly read three times and ratified this the 4th day of June, 1987.

AN ACT TO MAKE VARIOUS TECHNICAL AMENDMENTS TO
THE GENERAL STATUTES AS RECOMMENDED BY THE
GENERAL STATUTES COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 7A-289.26(d)(5) is amended on lines 4 and 5 by deleting the statutory reference "G.S. 1A-1, Rule 4(j)(9)(c)" and inserting in lieu thereof the statutory reference "G.S. 1A-1, Rule 4(jl)".

Sec. 2. G.S. 7A-289.28 is amended on line 4 by deleting the statutory reference "G.S. 1A-1, Rule 4(j)(9)c" and inserting in lieu thereof the statutory reference "G.S. 1A-1, Rule 4(jl)".

Sec. 3. G.S. 15A-504(c) is amended on line 2 by deleting the statutory reference "G.S. 122-65.11" and inserting in lieu thereof the statutory reference "G.S. 122C-301".

Sec. 4. G.S. 17C-3(b) is amended on lines 5 and 6 of the sixth paragraph thereof by deleting the words "Director of Law-Enforcement Training" and inserting in lieu thereof the word "President".

Sec. 5. G.S. 25A-2(a)(5) is amended on line 2 by deleting the term "mobile home" and inserting in lieu thereof the term "manufactured home".

Sec. 6. G.S. 28A-25-6(f) is amended on line 3 of the second paragraph thereof by deleting the statutory reference "Part 6 of Article 2 of Chapter 108" and inserting in lieu thereof the statutory reference "Part 3 of Article 2 of Chapter 108A".

Sec. 7. G.S. 46-28(b) is amended in the second sentence thereof by deleting the word "Commissioner" and inserting in lieu thereof the word "commissioners"; and G.S. 46-28(b) is further amended in the second sentence thereof by deleting the word "Court" each time it appears and inserting in lieu thereof the word "court".

Sec. 8. G.S. 47C-2-109(b)(6) is amended on line 1 by deleting the word "the" after the word "of" and before the word "architect" and inserting in lieu thereof the word "an"; and G.S. 47C-2-109(b)(6) is further amended on line 2 by deleting the word "a" and inserting in lieu thereof the word "an".

Sec. 9. G.S. 78A-56(g)(1) is amended on line 7 by deleting the words "at at" and inserting in lieu thereof the word "at".

Sec. 10. G.S. 78B-8(a) is amended on line 5 by deleting the words "prosecution of conviction" and inserting in lieu thereof the words "prosecution or conviction".

Sec. 11. G.S. 90A-59 is amended in the catch line by deleting the word "application" and by inserting in lieu thereof the word "applications".

Sec. 12. G.S. 95-47.2(d)(3)c is amended on the last line by deleting the statutory reference "G.S. 66-42" and inserting in lieu thereof the statutory reference "G.S. 66-49.27".

Sec. 13. G.S. 95-48 is amended on lines 1 and 2 by deleting the statutory reference "G.S. 130-160" and inserting in lieu thereof the statutory reference "G.S. 130A-335".

Sec. 14. G.S. 95-127(3) is amended on lines 5 and 6 by deleting the language ", 1971 Cumulative Supplement to Volume 3B".

Sec. 15. G.S. 105-504(d) is amended on line 1 by deleting the word "of" after the word "part" and before the word "all" and inserting in lieu thereof the word "or".

Sec. 16. G.S. 113-133.1(e) is amended as follows:

a. By deleting the language "; Session Laws 1959, Chapter 1304" from the paragraph relating to Halifax County.

b. By deleting the language "; Session Laws 1979, Chapter 568" from the paragraph relating to Martin County.

c. By deleting the language "Session Laws 1959, Chapter 1304;" from the paragraph relating to Northampton County.

d. By deleting the language "Session Laws 1977, Chapter 585" from the paragraph relating to Pender County and inserting in lieu thereof the language "Session Laws 1977, Chapter 585, as amended by Session Laws 1985, Chapter 421".

Sec. 17. G.S. 119-58(a)(2) is amended on lines 1 and 2 by deleting the term "mobile home" and inserting in lieu thereof the term "manufactured home".

Sec. 18. G.S. 122C-267(h) is amended on line 3 by deleting the statutory reference "G.S. 122C-262(d)(1)" and inserting in lieu thereof the statutory reference "G.S. 122C-263(d)(1)".

Sec. 19. G.S. 126-15.1 is amended on line 4 by deleting the statutory reference "G.S. 126-5(d)" and inserting in lieu thereof the statutory reference "G.S. 126-5(c)".

Sec. 20. G.S. 130A-304(a) is amended on lines 3 and 4 by deleting the statutory reference "G.S. 130A-16" and inserting in lieu thereof the statutory reference "G.S. 130A-17".

Sec. 21. G.S. 134A-21 is amended on line 4 by deleting the statutory reference "G.S. 130-191" and inserting in lieu thereof the statutory reference "G.S. 148-22.2".

Sec. 22. G.S. 134A-36 is amended on line 6 by deleting the statutory reference "Part 3, Article 3, Chapter 108" and inserting in lieu thereof the statutory reference "Article 2, Chapter 131D".

Sec. 23. G.S. 135-40.6(8)n is amended on line 3 by deleting the statutory reference "G.S. 90-143.1" and inserting in lieu thereof "G.S. 90-143".

Sec. 24. G.S. 135-40.6(9)b is amended on line 1 by deleting the statutory reference "subsection (2)f" and inserting in lieu thereof the statutory reference "subsection(8)f".

Sec. 25. G.S. 135-40.7A(c)(3) is amended on line 6 by deleting the word "or".

Sec. 26. G.S. 143-18.1(c) is amended on line 15 by deleting the comma after the word "Governor" and before the word "may".

Sec. 27. G.S. 143-60 is amended on line 1 of the first paragraph thereof by deleting the comma after the word "Administration" and before the word "may"; and G.S. 143-60 is further amended on line 1 of the second paragraph thereof by deleting the comma after the word "Administration" and before the word "may".

Sec. 28. G.S. 143B-499.4(5) is amended on line 2 by deleting the statutory reference "G.S. 243B-498(1)" and inserting in lieu thereof the statutory reference "G.S. 143B-498(1)".

Sec. 29. G.S. 159E-5(b) is amended by deleting the word "subsection" and inserting in lieu thereof the word "section".

Sec. 30. G.S. 159-7(b)(10) is amended by deleting the language "(G.S. 143-1 through 143-34.5)" and inserting in lieu thereof the language "(Article 1 of Chapter 143 of the General Statutes)".

Sec. 31. G.S. 159-7(b)(15) is amended by deleting the language "(G.S. 143-1 through 143-34.5)" and inserting in lieu thereof the language "(Article 1 of Chapter 143 of the General Statutes)".

Sec. 32. Section 12 of Chapter 462, Session Laws of 1985, is rewritten to read:

"Sec. 12. G.S. 105-149 is amended by deleting the phrase 'county health department' wherever it appears and substituting in lieu thereof the phrase 'local health department'; and G.S. 105-149 is further amended by deleting the phrase 'county health departments' wherever it appears and substituting in lieu thereof the phrase 'local health departments'."

Sec. 33. Section 1 of Chapter 859, Session Laws of 1985 (Regular Session, 1986), is amended by deleting "G.S. 15A-1343(a)(6)" and substituting "G.S. 15A-1343(b)(6)".

Sec. 34. Section 22 of Chapter 955, Session Laws of 1985 (Regular Session, 1986), is rewritten to read:

"Sec. 22. The first sentence of the first paragraph of G.S. 115D-5(e) is amended by deleting "shall consult" and substituting "may consult".

Sec. 35. Section 26 of Chapter 1020, Session Laws of 1985 (Regular Session, 1986), is rewritten to read:

"Sec. 26. G.S. 135-40.7(5) is amended by inserting between the words 'the' and 'necessary' the word 'medically'."

Sec. 36. This act is effective upon ratification, except that Section 25 of this act shall become effective January 1, 1988.

In the General Assembly read three times and ratified this the 4th day of June, 1987.

H.B. 865

CHAPTER 283

AN ACT TO DELETE THE REQUIREMENT THAT THE HISTORIC PROPERTIES COMMISSION AND THE CITY OR COUNTY GOVERNING BOARD HOLD JOINT PUBLIC HEARINGS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 160A-399.5(4) reads as rewritten:

"(4) The historic properties commission and the governing board shall hold ~~a public hearing~~ a joint public hearing or separate public hearings on the proposed ordinance. Reasonable notice of the time and place thereof shall be given. All meetings of the commission shall be open to the public, in accordance with the North Carolina Open Meetings Law, Chapter 143, ~~Article 33B~~ Article 33C."

Sec. 2. G.S. 160A-399.5(5) reads as rewritten:

"(5) Following the joint public hearing or separate public hearings, the governing board may adopt the ordinance as proposed, adopt the ordinance with any amendments it deems necessary, or reject the proposed ordinance."

Sec. 3. This act shall become effective with respect to ordinances adopted on or after September 1, 1987.

In the General Assembly read three times and ratified this the 4th day of June, 1987.

H.B. 957

CHAPTER 284

AN ACT TO CLARIFY THAT CERTAIN EMPLOYMENT CONSULTANTS, PERSONNEL DEPARTMENTS, AND EFFICIENCY CONSULTANTS ARE NOT PRIVATE DETECTIVE SERVICES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 74C-3(b) is amended by adding at the end two new subdivisions to read:

"(10) A person who obtains or verifies information regarding applicants for employment, with the knowledge and consent of the applicant, and is (i) engaged in business as a private personnel service as defined in G.S. 95-47.1 or engaged in business as a private employer fee pay personnel service, (ii) engaged in the business of obtaining or verifying information regarding applicants for employment, or (iii) an employer with whom the applicant has applied for employment.

(11) A person who is engaged in the business of providing efficiency studies to employers regarding services to consumers."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 4th day of June, 1987.

H.B. 977

CHAPTER 285

AN ACT TO MAKE TECHNICAL AMENDMENTS TO THE ADMINISTRATIVE PROCEDURE ACT, THE ADMINISTRATIVE RULES REVIEW COMMISSION STATUTES, AND RELATED STATUTES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143B-30.2(a) is amended by rewriting the second paragraph thereof to read as follows:

"Any rule filed by the 20th of a month shall be reviewed by the Commission by the last day of the next calendar month. Any rule filed after the 20th of a month shall be reviewed by the Commission by the last day of the second subsequent calendar month. The Commission may extend the time for review of a rule by a period of up to 70 days to obtain additional information on the rule. The Commission shall file notice of the extension of time for review of a rule with the agency and the Director of the Office of Administrative Hearings. A rule may not be presented for filing with the Director of the Office of Administrative Hearings under G.S. 150B-59 unless the rule has been reviewed by the Commission as provided in this section."

Sec. 2. G.S. 143B-30.2(b) is further amended by rewriting subsection (b) to read as follows:

"(b) If the Commission reviews a rule and determines that it is within the authority delegated to the agency, is clear and unambiguous, and is reasonably necessary, the Commission shall note its approval, notify the agency, and file the rule with the Director of the Office of Administrative Hearings under G.S. 150B-59, and the rule shall become effective as provided in that section."

Sec. 3. G.S. 143B-30.2(d) is amended by inserting "as authorized by (c)" between "report" and the comma, and further amended by inserting the following language between "attached" and the period:

"; provided, however, that in the case of a board, committee, council, or commission the response is due within 30 days after receipt of the Commission's written report or within 10 days following the next regularly scheduled meeting of the board, committee, council, or commission, whichever time period is greater".

Sec. 4. G.S. 143B-30.2(f) is amended by deleting the words "approval of" in the first sentence and substituting in lieu thereof: "review of and objection to" and by deleting the second sentence in its entirety.

Sec. 5. G.S. 143B-30.2 is further amended by adding a new subsection (i) to read as follows:

"(i) Rules adopted in accordance with the procedure in G.S. 150B-13 shall be reviewed by the Commission and are subject to objection as provided in (c).

The Commission shall review the reasons given for the adoption of a temporary rule and may object to the rule due to the agency's failure to make the finding required by G.S. 150B-13."

Sec. 6. G.S. 143B-30.3(a) is amended by rewriting the first sentence to read:

"Notwithstanding G.S. 143B-30.2(a), at any time before the time for review set out in that subsection expires or upon the written request of any agency, the Commission may call a public hearing on any rule."

Sec. 7. G.S. 150B-12(a) is amended by deleting the following language:

"at least 60 days".

Sec. 8. G.S. 150B-12(b) is repealed.

Sec. 9. G.S. 150B-12 is further amended by adding a new sentence at the end of subsection (h) to read as follows:

"No rule-making hearing is required to amend or repeal a rule to comply with G.S. 143B-30.2 in accordance with G.S. 150B-59(c)."

Sec. 10. G.S. 150B-13(a)(2)a. is rewritten to read:

"A serious and unforeseeable threat to public health, safety, or welfare;"

Sec. 11. G.S. 150B-13(a)(2) is further amended by inserting a new subparagraph c. to read as follows and by relettering the existing subparagraphs c. and d. accordingly:

"c. A recent change in federal or State budgetary policy;"

Sec. 12. G.S. 150B-13(c) is amended by deleting "120 days" and inserting in lieu thereof:

"180 days and are subject to review as provided in G.S. 143B-30.2(i)".

Sec. 13. G.S. 150B-14 is rewritten to read as follows:

"(a) An agency may adopt by reference in its rules, without publishing the adopted matter in full:

- (1) all or any part of a code, standard, or regulation which has been adopted by any other agency of this State or by any agency of the United States or by a generally recognized organization or association;
- (2) any plan or material which is adopted to meet the requirements of any agency of the United States and approved by that agency;
- (3) any plan, material, manual, guide or other document establishing job application or employment practices or procedures of any State agency other than the State Personnel Commission. The State Personnel Commission, however, shall incorporate by reference in its rules job classification standards, including but not limited to those relating to qualifications and salary levels; or
- (4) the hearings division rules promulgated by the Office of Administrative Hearings.

In adopting matter by reference, the agency shall specify in the rule and in the Register whether such adoption is in accordance with the provisions of subsection (b) or (c) of this section. The agency can change this election only by a subsequent rulemaking proceeding.

(b) If an agency adopts matter by reference in accordance with this subsection, such reference shall not cover any later amendments and editions of the adopted matter, but if the agency wishes to incorporate them in its rule it shall amend the rule or promulgate a new rule.

(c) If any agency adopts matter by reference in accordance with this subsection, such reference shall automatically include any later amendments and editions of the adopted matter.

(d) An agency may cross-reference its own rules in the North Carolina Administrative Code without violating the provisions of (a)(1) of this section."

Sec. 14. G.S. 150B-59(a) is amended by inserting the following language between "Hearings" and the period: "no sooner than 90 days before their effective date", and further amended by inserting the following language between "or" and "(f)": "reviewed and objected to under".

Sec. 15. G.S. 150B-59 is further amended by inserting new sentences between the existing fourth and fifth sentences of subsection (c) to read as follows:

"In the event of rules which the Commission determines do not comply with G.S. 143B-30.2, such rules may be revised or repealed by the agency without a rule-making hearing in accordance with G.S. 150B-12(h). Revised rules shall be returned to the Commission. If the Commission approves the rules, the Commission shall notify the agency and file the rules with the Office of Administrative Hearings."

Sec. 16. G.S. 150B-60(a)(5) is amended by deleting the words "and approved".

Sec. 17. G.S. 95-131(a) is rewritten to read as follows:

"(a) All occupational safety and health standards promulgated under the federal act by the Secretary, and any modifications, revision, amendments or revocations in accordance with the authority conferred by the federal act or any other federal act or agency relating to safety and health and adopted by the Secretary, shall be the rules of the Commissioner of this State unless the Commissioner shall promulgate an alternative State rule or standard as effective as the federal requirement and providing safe and healthful employment in places of employment as required by the federal act and standards and regulations heretofore referred to and as provided by the Occupational Safety and Health Act of 1970. All standards and rules promulgated under the federal act by the Secretary, and any modifications, revisions, or revocations in accordance with the authority conferred by the federal act, or any other federal act or agency relating to safety and health and adopted by the Secretary, shall become effective upon the date the same are filed by the Commissioner in the Office of Administrative Hearings in accordance with G.S. 150B-59."

Sec. 18. G.S. 106-266.8(10)a. is amended by deleting ", after investigation and public hearing," and by inserting a new sentence at the end thereof to read as follows:

"Notwithstanding the provisions of G.S. 150B-59(a), such rules shall become effective when approved by the Commission. The Commission shall file any rule with the Director of the Office of Administrative Hearings within two working days of its adoption by the Commission."

Sec. 19. This act shall become effective on the first day of the fourth calendar month after ratification.

In the General Assembly read three times and ratified this the 4th day of June, 1987.

AN ACT TO MODERNIZE THE PRIORITY FUNERAL EXPENSE ALLOWANCE IN PROBATE PROCEEDINGS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 28A-19-6 reads as rewritten:

" § 28A-19-6. *Order of payment of claims.*--After payment of costs and expenses of administration, the claims against the estate of a decedent must be paid in the following order:

First class. Claims which by law have a specific lien on property to an amount not exceeding the value of such property.

Second class. Funeral expenses to the extent of ~~one thousand dollars (\$1,000)~~ two thousand dollars (\$2,000). This limitation shall not include cemetery lot or gravestone. The preferential limitation herein granted shall be construed to be only a limit with respect to preference of payment and shall not be construed to be a limitation on reasonable funeral expenses which may be incurred; nor shall the preferential limitation of payment in the amount of ~~one thousand dollars (\$1,000)~~ two thousand dollars (\$2,000) be diminished by any Veterans Administration, social security or other federal governmental benefits awarded to the estate of the decedent or to his or her beneficiaries.

Third class. All dues, taxes, and other claims with preference under the laws of the United States.

Fourth class. All dues, taxes, and other claims with preference under the laws of the State of North Carolina and its subdivisions.

Fifth class. Judgments of any court of competent jurisdiction within the State, docketed and in force, to the extent to which they are a lien on the property of the decedent at his death.

Sixth class. Wages due to any employee employed by the decedent, which claim for wages shall not extend to a period of more than 12 months next preceding the death; or if such employee was employed for the year current at the decease, then from the time of such employment; for medical services within the 12 months preceding the decease; for drugs and all other medical supplies necessary for the treatment of such decedent during the last illness of such decedent, said period of last illness not to exceed 12 months.

Seventh class. All other claims."

Sec. 2. This act shall become effective October 1, 1987.

In the General Assembly read three times and ratified this the 4th day of June, 1987.

H.B. 1036

CHAPTER 287

AN ACT TO IMPLEMENT THE FEDERAL SINGLE AUDIT ACT OF 1984 IN NORTH CAROLINA.

The General Assembly of North Carolina enacts:

Section 1. G.S. 159-34 is amended:

(1) by designating the first paragraph as subsection (a) and adding two new sentences to follow the first sentence thereof, to read:

"When specified by the secretary, the audit shall evaluate the performance of a unit of local government or public authority with regard to compliance with all applicable federal and State agency regulations. This audit, combined with the audit of financial accounts, shall be deemed to be the single audit described by the 'Federal Single Audit Act of 1984'." and,

(2) by adding a new subsection (c) to read:

"(c) Notwithstanding any other provision of law, except for Article 5 of Chapter 147 of the General Statutes pertaining to the State Auditor, all State departments and agencies shall rely upon the single audit accepted by the secretary as the basis for compliance with applicable federal and State regulations. All State departments and agencies which provide funds to local governments and public authorities shall provide the Commission with documents approved by the State Auditor in a prescribed format describing standards of compliance and suggested audit procedures sufficient to give adequate direction to independent auditors retained by local governments and public authorities to conduct a single audit as required by this section. The secretary shall be responsible for the annual distribution of all such standards of compliance and suggested audit procedures proposed by State departments and agencies and any amendments thereto. Further, the Commission with the cooperation of all affected State departments and agencies shall be responsible for the following:

- (1) Procedures for the timely distribution of compliance standards developed by State departments and agencies, reviewed and approved by the State Auditor to auditors retained by local governments and public authorities.
- (2) Procedures for the distribution of single audits for local governments and public authorities such that they are available to all State departments and agencies which provide funds to local units.
- (3) The acceptance of single audits on behalf of all State departments and agencies; provided that, the secretary may subsequently revoke such acceptance for cause, whereupon

affected State departments and agencies shall no longer rely upon such audit as the basis for compliance with applicable federal and State regulations.

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 4th day of June, 1987.

H.B. 1076

CHAPTER 288

AN ACT TO PROVIDE THAT CONFESSIONS OF JUDGMENT
MAY BE SWORN TO AS WELL AS VERIFIED.

The General Assembly of North Carolina enacts:

Section 1. G.S. 1A-1, Rule 68.1(b) reads as rewritten:

"(b) Procedure. A prospective defendant desiring to confess judgment shall file with the clerk of the superior court as provided in section (c) a statement in writing signed and verified or sworn to by such defendant authorizing the entry of judgment for the amount stated. The statement shall contain the name of the prospective plaintiff, his county of residence, the name of the defendant, his county of residence, and shall concisely show why the defendant is or may become liable to the plaintiff.

If either the plaintiff or defendant is not a natural person, for the purposes of this rule its county of residence shall be considered to be the county in which it has its principal place of business, whether in this State or not."

Sec. 2. This act is effective upon ratification and validates all confessions of judgment heretofore entered under G.S. 1A-1, Rule 68.1, which were sworn to but not verified, but this act shall not affect any pending litigation.

In the General Assembly read three times and ratified this the 4th day of June, 1987.

H.B. 1159

CHAPTER 289

AN ACT TO ESTABLISH AN AGING POLICY PLAN FOR
NORTH CAROLINA.

Whereas, the number of people in North Carolina who are 65 and older is rapidly increasing; and

Whereas, today, one citizen in eight is 65 or older; and

Whereas, by 2030, one citizen in five will be 65 or older; and

Whereas, increasing costs of medical care, the lack of adequate in-home and institutional care, insufficient pension income, forced early retirement, and lack of public awareness and understanding of the problems of aging have all compounded the problems of the older adult; and

Whereas, there is a great, and increasing, need for a statewide policy plan to determine how best to assess the present and future needs of older adults and how best to deliver present and future social, health, and community services to older adults; and

Whereas, although the General Assembly created the mechanism for this needed long range planning by establishing the Division of Aging in the Department of Human Resources and the Policy Act for Aging in Part 14 of Article 3 of Chapter 143B of the General Statutes, there is as yet no adequate long range, statewide, aging policy plan; Now, therefore,

The General Assembly of North Carolina enacts:

Section 1. The Secretary of Human Resources, with the advise of the Assistant Secretary for Aging and all other key officials of the Divisions within the Department of Human Resources that are involved with any of the areas of human services that affect older adults, shall prepare and present to the committees and commissions established by the General Assembly to study issues that affect older adults and to the Joint Legislative Commission on Governmental Operations by December 31, 1987, a statewide aging policy plan documenting the present needs of older adults, predicting their future needs, and recommending how best the State of North Carolina can meet these needs.

Sec. 2. Nothing in this act requires any additional appropriations.

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 4th day of June, 1987.

H.B. 1213

CHAPTER 290

AN ACT TO PROVIDE A PLACE WITHIN THE STATE GOVERNMENT COMPLEX FOR THE STATE EMPLOYEES' CREDIT UNION.

The General Assembly of North Carolina enacts:

Section 1. The General Assembly finds that the loss of a permanent facility for the North Carolina State Employees' Credit Union within the area described in G.S. 146-22.1(3), which is

generally called the "State Government Complex", would cause a significant loss of access and convenience to State employees; therefore, before the Department of Administration acquires, pursuant to G.S. 146-22.1(3), the land at 119 N. Salisbury Street in Raleigh on which the permanent office of the North Carolina State Employees' Credit Union is located, the State shall permit the North Carolina State Employees' Credit Union to acquire by purchase, lease, or rental an equivalent site within the State Government Complex for the relocation of the North Carolina State Employees' Credit Union.

The Department of Administration and the Capital Planning Commission shall provide for such a site in the Master Plan for the State Government Complex. The site shall be selected so as not to prevent the utilization of or construction on other State property by the State but to provide the North Carolina State Employees' Credit Union, at no cost to the State, a place convenient to State employees to serve its customers.

If the North Carolina State Employees' Credit Union acquires a new site within the State Government Complex for a facility, it shall be on condition that (i) the facility be maintained in a manner that will be compatible with surrounding structures (ii) any major exterior expansion or renovation of the facility will be in keeping with the goals of the Master Plan for the State Government Complex; and (iii) the acquisition be at no cost to the State.

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 4th day of June, 1987.

H.B. 1990

CHAPTER 291

AN ACT TO ALLOW THE CITY OF NEW BERN TO PROVIDE REASONABLE RELOCATION ASSISTANCE TO PERSONS DISPLACED AS A RESULT OF DILAPIDATED RESIDENCES BEING DEMOLISHED UNDER A REHABILITATION PROGRAM AS PART OF A COMMUNITY DEVELOPMENT ACTIVITY OR PROGRAM.

The General Assembly of North Carolina enacts:

Section 1. G.S. 160A-456 is amended by adding a new subsection to read:

"(f) Any city may provide reasonable relocation assistance to persons displaced as a result of dilapidated residences being demolished under a rehabilitation program as part of a community

development activity or program."

Sec. 2. This act applies to the City of New Bern only.

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 4th day of June, 1987.

S.B. 559

CHAPTER 292

AN ACT TO AMEND THE FERTILIZER LAW.

The General Assembly of North Carolina enacts:

Section 1. G.S. 106-659 is rewritten to read:

"§ 106-659. *Minimum plant food content.*--Superphosphate containing less than eighteen percent (18%) available phosphoric acid, or any mixed fertilizer in which the guarantees for the nitrogen, available phosphoric acid, or soluble potash are in fractional percentages may not be offered for sale, sold, or distributed in this State; provided, however, packages of 16 fluid ounces or less when in liquid form, or 16 ounces or less avoirdupois when in a dry form, may be sold in fractional percentages, but such packages are not exempt from any other requirements of this Article."

Sec. 2. G.S. 106-660(a) is amended by rewriting the second sentence thereof as follows:

"(a) Other fertilizers may be manufactured and sold without registration after obtaining a license as required in G.S. 106-661(a)."

Sec. 3. This act shall become effective July 1, 1987.

In the General Assembly read three times and ratified this the 8th day of June, 1987.

S.B. 560

CHAPTER 293

AN ACT TO IMPROVE THE COLLECTION OF COST SHARING ASSESSMENTS FOR BOLL WEEVIL ERADICATION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 106-65.90 is amended by adding a new subsection as follows:

"(c) In addition to any other remedies for the collection of assessments, including penalties, the Department of Agriculture has a lien upon cotton subject to such assessments. Provided, that any buyer of cotton shall take free of such lien if he has not received

written notice of the lien from the Department or if he has paid for such cotton by a check in which the Department is named as joint payee. In any action to enforce the lien, the burden shall be upon the Department to prove that the buyer of cotton received written notice of the lien. A buyer of cotton other than a person buying cotton from the grower takes free of the lien created herein."

Sec. 2. This act shall become effective October 1, 1987.

In the General Assembly read three times and ratified this the 8th day of June, 1987.

S.B. 561

CHAPTER 294

AN ACT TO AMEND AND CLARIFY THE PROMOTION OF
SALE AND USE OF TOBACCO STATUTES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 106-568.20 is rewritten to read:

"§ 106-568.20. *Referendum on assessment for next three years.*-- During the year 1988 or 1989 upon the exact date in such year as may be determined in the manner hereinafter set forth and under rules and regulations as established under the provisions of this Article, there shall be held in every county in North Carolina in which flue-cured tobacco is produced a referendum to be participated in by all farmers engaged in the production of flue-cured tobacco in which referendum said farmers shall vote upon the question of whether or not there shall be levied an annual assessment for a period of three years 1989, 1990 and 1991, such amount as may have been theretofore or as may be thereafter determined by the Board of Directors of Tobacco Associates, Inc., but not more than two dollars (\$2.00) per acre per year on all flue-cured tobacco acreage in the State of North Carolina. Those farmers entitled to share in the crop of flue-cured tobacco or in the proceeds of such crop because of sharing in the risk of production shall be deemed to be engaged in the production of such tobacco."

Sec. 2. G.S. 106-568.21 is amended by deleting "1961" in the heading thereof.

Sec. 3. G.S. 106-568.22 is amended as follows:

(a) By deleting "1961" in the heading thereof; and

(b) By deleting the words "one dollar (\$1.00)" and substituting "two dollars (\$2.00)".

Sec. 4. G.S. 106-568.23 is amended:

(a) By deleting "1961" in the heading thereof and "in the said year 1961" in the first sentence thereof; and

(b) By deleting the numeral "30" and inserting "15".

Sec. 5. G.S. 106-568.24 is amended by deleting "1961" in the heading thereof.

Sec. 6. G.S. 106-568.25 is amended as follows:

- (a) By deleting "1961" from the heading thereof;
- (b) By inserting after the word "assessment" in the first sentence the words "upon themselves";
- (c) By deleting "1962, 1963 and 1964" and inserting "1989, 1990 and 1991"; and
- (d) By deleting "one dollar (\$1.00)" and inserting "two dollars (\$2.00)".

Sec. 7. G.S. 106-568.28 is amended by inserting the word "last" before the word "date" and deleting the words "said assessment" the second time they appear and substituting the words "such assessment".

Sec. 8. G.S. 106-568.30 is amended by deleting the phrase "during the last year of such period" and the word "ensuing" and inserting before the last word of the first sentence the words "tobacco marketing".

Sec. 9. G.S. 106-568.31 is amended by deleting "30" and inserting "60".

Sec. 10. G.S. 106-568.34 is amended by rewriting the second sentence to read: "No alternative assessment for any year after 1979 shall exceed ten cents (10¢) per 100 pounds of the flue-cured tobacco marketed by each farmer."

Sec. 11. G.S. 106-568.32 is repealed.

Sec. 12. G.S. 106-568.35(b) is amended:

- (a) By deleting the word "produce" and substituting the words "are engaged in the production of"; and
- (b) By deleting the numeral "30" the first time it appears therein and inserting the numeral "15".

Sec. 13. G.S. 106-568.36 is amended by deleting from the last phrase the words "effective farm quota of a member" and inserting "flue-cured tobacco marketed by each farmer".

Sec. 14. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 8th day of June, 1987.

H.B. 17

CHAPTER 295

AN ACT TO PROVIDE TAXPAYERS MORE NOTICE OF THE ADOPTION OF SCHEDULES OF VALUE AND TO CLARIFY THE PROCEDURE FOR APPEALS CONCERNING SCHEDULES OF VALUE AND OTHER PROPERTY TAX MATTERS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-317 is amended as follows:

(1) by rewriting subdivision (b)(1) to read:

"(1) Uniform schedules of values, standards, and rules to be used in appraising real property at its true value and at its present-use value are prepared and are sufficiently detailed to enable those making appraisals to adhere to them in appraising real property.";

(2) by deleting the phrase "adopted pursuant to subsection (b)" in subdivision (b)(4);

(3) by rewriting subsection (c) to read:

"(c) The values, standards, and rules required by subdivision (b)(1) shall be reviewed and approved by the board of county commissioners before January 1 of the year they are applied. The board of county commissioners may approve the schedules of values, standards, and rules to be used in appraising real property at its true value and at its present-use value either separately or simultaneously. Notice of the receipt and adoption by the board of county commissioners of either or both the true value and present-use value schedules, standards, and rules, and notice of a property owner's right to comment on and contest the schedules, standards, and rules shall be given as follows:

(1) The assessor shall submit the proposed schedules, standards, and rules to the board of county commissioners not less than 21 days before the meeting at which they will be considered by the board. On the same day that they are submitted to the board for its consideration, the assessor shall file a copy of the proposed schedules, standards, and rules in his office where they shall remain available for public inspection.

(2) Upon receipt of the proposed schedules, standards, and rules, the board of commissioners shall publish a statement in a newspaper having general circulation in the county stating:

a. That the proposed schedules, standards, and rules to be used in appraising real property in the county have been submitted to the board of county commissioners and are available for public inspection in the assessor's office; and

b. The time and place of a public hearing on the proposed schedules, standards, and rules that shall be held by the board of county commissioners at least seven days before adopting the final schedules, standards, and rules.

- (3) When the board of county commissioners approves the final schedules, standards, and rules, it shall issue an order adopting them. Notice of this order shall be published once a week for four successive weeks in a newspaper having general circulation in the county, with the last publication being not less than seven days before the last day for challenging the validity of the schedules, standards, and rules by appeal to the Property Tax Commission. The notice shall state:

- a. That the schedules, standards, and rules to be used in the next scheduled reappraisal of real property in the county have been adopted and are open to examination in the office of the assessor; and
- b. That a property owner who asserts that the schedules, standards, and rules are invalid may except to the order and appeal therefrom to the Property Tax Commission within 30 days of the date when the notice of the order adopting the schedules, standards, and rules was first published."; and

- (4) by adding the following subsection to read:

"(d) Before the board of county commissioners adopts the schedules of values, standards, and rules, the assessor may collect data needed to apply the schedules, standards, and rules to each parcel in the county."

Sec. 2. G.S. 105-277.6 is amended as follows:

- (1) by adding a sentence at the end of subsection (b) to read:

"The present use-value schedule, standards, and rules shall be used by the tax assessor to appraise property receiving the benefit of this classification until the next general revaluation of real property in the county as required by G.S. 105-286.";

- (2) by deleting subsection (c).

Sec. 3. G.S. 105-290 is amended as follows:

- (1) by rewriting subdivision (c)(1) to read:

"(1) A property owner of the county who, either separately or in conjunction with other property owners of the county, asserts that the schedules of values, standards, and rules adopted by order of the board of county commissioners do not meet the true value or present-use value appraisal standards established by G.S. 105-283 and G.S. 105-277.2(5), respectively, may appeal the order to the Property Tax Commission within 30 days of the date when the order adopting the schedules, standards, and rules was first published, as required by G.S. 105-317(c)."; and

- (2) by adding the following new subsections to read:

"(e) Time Limits for Appeals. A notice of appeal from an order of a board of equalization and review shall be filed with the Property Tax Commission within 30 days after the board of equalization and review has mailed a notice of its decision to the property owner. A notice of appeal from an order of a board of commissioners concerning the listing, appraisal, or assessment of property shall be filed with the Property Tax Commission within 30 days after the board of county commissioners enters the order.

(f) Notice of Appeal. A notice of appeal filed with the Property Tax Commission shall be in writing and shall state the grounds for the appeal. A property owner who files a notice of appeal shall send a copy of the notice to the appropriate county assessor.

(g) What Constitutes Filing. A notice of appeal is considered to be filed with the Property Tax Commission when it is received in the office of the Commission."

Sec. 4. G.S. 105-324 is repealed.

Sec. 5. The second sentence of G.S. 105-277.4(b1) and the fifth sentence of G.S. 105-282.1(b) are each amended by deleting the phrase "as provided in G.S. 105-324".

Sec. 6. The second sentence of G.S. 105-282.1(b) is amended by deleting the phrase "as provided in G.S. 105-322 and 105-324".

Sec. 7. The first sentence of G.S. 105-289.1(c) is amended by deleting the phrase "and a written statement of the grounds of appeal" and substituting the phrase "stating the grounds for appeal".

Sec. 8. G.S. 105-325 is amended as follows:

(1) by deleting the reference "105-324" in subdivision (a)(1) and substituting the reference "105-290"; and

(2) by deleting the reference "G.S. 105-324(c)" in subsection (c) and substituting the reference "G.S. 105-290".

Sec. 9. G.S. 105-290(b) is amended by adding the following sentence immediately after the first sentence of that subsection to read:

"Any property owner of the county may except to an order of the county board of equalization and review or the board of county commissioners concerning the listing, appraisal, or assessment of property and appeal the order to the Property Tax Commission."

Sec. 10. This act shall become effective January 1, 1988.

In the General Assembly read three times and ratified this the 8th day of June, 1987.

H.B. 185

CHAPTER 296

AN ACT TO REQUIRE THE NORTH CAROLINA MEDICAL CARE COMMISSION TO STUDY THE SAFETY OF HELICOPTER AMBULANCES AND REPORT TO THE GENERAL ASSEMBLY.

The General Assembly of North Carolina enacts:

Section 1. The North Carolina Medical Care Commission shall study the issue of helicopter ambulance safety and shall make a report to the Speaker of the House and the President of the Senate on or before the first day of the 1988 Session of the 1987 General Assembly. This report shall include the identification of safety problems, recommendations concerning the need for new regulations by the Commission and new legislation by the General Assembly, and recommendations for necessary action by the Federal Aviation Administration.

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 8th day of June, 1987.

H.B. 351

CHAPTER 297

AN ACT TO REDUCE THE TRAUMA TO A CHILD VICTIM BY CLARIFYING THAT CHILD PROTECTION AGENCIES ARE AUTHORIZED TO SHARE INFORMATION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 7A-675 is amended by adding a new subsection to read:

"(i) In the case of a child victim, a judge may order the sharing of information among such public agencies as the judge deems necessary to reduce the trauma to the child victim."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 8th day of June, 1987.

H.B. 448

CHAPTER 298

AN ACT TO PROHIBIT HUNTING FROM THE RIGHTS-OF-WAY OF PUBLIC ROADS IN THE COUNTIES OF ALEXANDER, CATAWBA, AND IREDELL.

The General Assembly of North Carolina enacts:

Section 1. It is unlawful to hunt, take, or kill or to attempt to hunt, take, or kill any animal or bird on or from the right-of-way of any public road, street, highway, or thoroughfare.

Sec. 2. Violation of this act is a misdemeanor punishable for a first conviction by a fine of not less than ten dollars (\$10.00) or more than fifty dollars (\$50.00) or by imprisonment not to exceed 30 days, and punishable for a second or subsequent conviction within three years by a fine of not less than fifty dollars (\$50.00) or more than two hundred dollars (\$200.00), by imprisonment not to exceed 90 days, or by both.

Sec. 3. This act is enforceable by law enforcement officers of the Wildlife Resources Commission, by sheriffs and deputy sheriffs, and by other peace officers with general subject matter jurisdiction.

Sec. 4. This act applies only to the Counties of Alexander, Catawba, and Iredell.

Sec. 5. This act shall become effective October 1, 1987.

In the General Assembly read three times and ratified this the 8th day of June, 1987.

H.B. 462

CHAPTER 299

AN ACT MAKING A TECHNICAL AMENDMENT TO THE REVENUE LAWS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-446.2(a) reads as amended:

"(a) The North Carolina Wildlife Resources Commission shall receive one eighth of one percent ($1/8$ of 1%) of the net proceeds of the taxes on motor fuels levied under G.S. 105-434 and the same shall be paid in accordance with the accounting periods as set forth under ~~G.S. 105-446(1)~~ G.S. 105-440(a). As used in this section 'net proceeds' shall mean the entire tax collected less one cent (1¢) per gallon nonrebatable tax required to be segregated by Chapter 1250 of the Session Laws of 1949, as amended by Chapter 46 of the Session Laws of 1965."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 8th day of June, 1987.

H.B. 494

CHAPTER 300

AN ACT TO ALLOW CURBSIDE VOTING DURING THE ENTIRE TIME THE POLLS ARE OPEN, SO AS TO COMPLY WITH THE FEDERAL VOTING ACCESSIBILITY FOR THE ELDERLY AND HANDICAPPED ACT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 163-155 reads as rewritten:

" § 163-155. *Aged and disabled persons allowed to vote outside voting enclosure.*--In any primary or election any qualified voter who is able to travel to the voting place, but because of age, or physical disability and physical barriers encountered at the voting place is unable to enter the voting place or enclosure to vote in person without physical assistance, shall be allowed to vote ~~between the hours of 7:00 A.M. and 6:00 P.M. only~~ either in the vehicle conveying such person to the voting place or in the immediate proximity of the voting place under the following restrictions:

- (1) The county board of elections shall have printed and numbered a sufficient supply of affidavits to be distributed to each precinct registrar which shall be in the following form:

'Affidavit of person voting outside voting place or enclosure.

State of North Carolina

County of _____

I do solemnly swear (or affirm) that I am a registered voter in _____ precinct. That because of age or physical disability I am unable to enter the voting place to vote in person without physical assistance. That I desire to vote outside the voting place and enclosure.

I understand that a false statement as to my condition will subject me to a fine not to exceed five hundred dollars (\$500.00) or imprisonment not to exceed six months, or both.

Date

Signature of Voter

Address

Signature of assistant
who administered oath.'

- (2) The registrar shall designate one of the assistants, appointed under G.S. 163-42 to attend the voter. Upon arrival outside the voting place, the voter shall execute the affidavit after being sworn by the assistant. The ballots shall then be delivered to the voter who shall mark the ballots and hand them to the assistant. The ballots shall then be delivered to one of the judges of elections who shall deposit the ballots in the proper boxes. The affidavit shall be delivered to the other judge of election.
- (3) The voter shall be entitled to the same assistance in marking the ballots as is authorized by G.S. 163-152.
- (4) The affidavit executed by the voter shall be retained by the county board of elections for a period of six months. In those precincts using voting machines, the county board of elections shall furnish paper ballots of each kind for use by persons authorized to vote outside the voting place by this section.
- (5) If there is no assistant appointed under G.S. 163-42 to perform the duties required by this section, the precinct registrar or one of the precinct judges, to be designated by the voter, if he chooses, or, if he does not, by the precinct registrar, shall perform those duties.

A violation of this section shall be a misdemeanor and upon conviction punished by a fine not to exceed five hundred dollars (\$500.00) or imprisonment not to exceed six months, or both, in the discretion of the court."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 8th day of June, 1987.

H.B. 655

CHAPTER 301

AN ACT TO EXTEND PROFESSIONAL LIABILITY INSURANCE COVERAGE TO COMMUNITY COLLEGES AND TECHNICAL COLLEGES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 58-27.23 reads as rewritten:

" § 58-27.23. *Professional liability insurance for State officials.--*(a) The Commission may acquire professional liability insurance covering the officers and employees, or any group thereof, of any State department, institution or ~~agency~~, agency or any community college or technical college. Premiums for such insurance shall be paid by the

requesting department, ~~institution or agency,~~ institution, agency, community college or technical college at rates established by the Commission, from funds made available to such department, ~~institution or agency~~ institution, agency, community college or technical college for the purpose.

(b) The Commission, pursuant to this section, may acquire professional liability insurance covering the officers and employees, or any group thereof, of a department, institution or agency of State government or a community college or technical college only if the coverage to be provided by such policy is in excess of the protection provided by Articles 31 and 31A of General Statutes Chapter 143.

(c) The purchase, by any State department, ~~institution or agency~~ institution, agency, community college or technical college of professional liability insurance covering the law-enforcement officers, officers or employees of such department, ~~institution or agency~~ institution, agency, community college or technical college shall not be construed as a waiver of any defense of sovereign immunity by such department, ~~institution or agency,~~ institution, agency, community college or technical college. The purchase of such insurance shall not be deemed a waiver by any employee of the defense of sovereign immunity to the extent that such defense may be available to him.

(d) The payment, by any State department, ~~institution or agency~~ institution, agency, community college or technical college of funds as premiums for professional liability insurance through the plan provided herein, covering the law-enforcement officers or officials or employees of such department, ~~institution or agency~~ institution, agency, community college or technical college is hereby declared to be for a public purpose."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 8th day of June, 1987.

H.B. 868

CHAPTER 302

AN ACT TO REGULATE DEER HUNTING IN THE BLADEN LAKES STATE FOREST.

The General Assembly of North Carolina enacts:

Section 1. (a) It is unlawful to hunt, take, or kill any bird or animal or to attempt to hunt, take, or kill any bird or animal on property adjacent to Bladen Lakes State Forest without the written permission of the owner or lessee of the land. It is unlawful to hunt,

take, or kill any bird or animal or to attempt to hunt, take, or kill any bird or animal on, from, or across the right-of-way of any public road adjacent to property adjacent to Bladen Lakes State Forest without the written permission of the owner or lessee of the land adjacent to the road. The written permission shall be dated, it shall be valid for a period of no longer than one year after issuance, and it shall be displayed upon request to any law enforcement officer with authority to enforce this act.

(b) This section is enforceable by law enforcement officers of the Wildlife Resources Commission, by sheriffs and deputy sheriffs, and by other peace officers with general subject matter jurisdiction.

(c) Violation of this section is a misdemeanor punishable for a first conviction by a fine of not less than fifty dollars (\$50.00) nor more than one hundred dollars (\$100.00) or by imprisonment not to exceed 30 days, and punishable for a second or subsequent conviction within three years by a fine of not less than one hundred dollars (\$100.00) nor more than two hundred fifty dollars (\$250.00), by imprisonment not to exceed 90 days, or by both.

Sec. 2. The Wildlife Resources Commission shall establish and regulate areas within the Bladen Lakes State Forest for taking deer with dogs and for taking deer without the use of dogs. The Commission shall establish and regulate these areas so as to assure the owners and lessees of adjacent land that hunts originating on the State forest land will not violate the provisions of Section 1 of this act.

Sec. 3. This act shall become effective October 1, 1987.

In the General Assembly read three times and ratified this the 8th day of June, 1987.

H.B. 766

CHAPTER 303

AN ACT TO PERMIT MUNICIPALITIES BORDERING ON THE ATLANTIC OCEAN AND ROANOKE, ALBEMARLE, OR CURRITUCK SOUND TO REGULATE SEWER TIE-ONS WITHIN THEIR CORPORATE LIMITS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 160A-196 reads as rewritten:

" § 160A-196. *Sewage tie-ons.*--Cities that (in whole or in part) are adjacent to, adjoining, intersected by or bounded by the Atlantic Ocean and Roanoke, Albemarle, Currituck, or Pamlico Sound may by

ordinance regulate the tie-ons to sewage systems within their corporate limits."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 8th day of June, 1987.

H.B. 794

CHAPTER 304

AN ACT TO UPGRADE THE CHIROPRACTIC PROFESSION BY REQUIRING A BACHELOR OF SCIENCE DEGREE FOR LICENSURE TO PRACTICE CHIROPRACTIC IN NORTH CAROLINA.

The General Assembly of North Carolina enacts:

Section 1. G.S. 90-143 reads as rewritten:

"§ 90-143. *Definitions of chiropractic; examinations; educational requirements.*--Chiropractic is herein defined to be the science of adjusting the cause of disease by realigning the spine, releasing pressure on nerves radiating from the spine to all parts of the body, and allowing the nerves to carry their full quota of health current (nerve energy) from the brain to all parts of the body. It shall be the duty of the North Carolina State Board of Chiropractic Examiners (hereinafter referred to as "Board") to examine for license to practice chiropractic every applicant who complies with the following provisions: He shall, before he is admitted to examination, furnish proof of good moral character and satisfy the Board that he ~~has completed two years of prechiropractic college education and received credits for a minimum of 60 semester hours~~ has received a baccalaureate degree from a college or university accredited by a regional accreditation body recognized by the U.S. Department of Education. He shall exhibit a diploma or furnish proof of graduation from a chiropractic college accredited by the Council on Chiropractic Education or holding recognized candidate for accreditation status with the Council on Chiropractic Education or a college teaching chiropractic that, in the Board's opinion, meets the equivalent standards established by the Council on Chiropractic Education, requiring an attendance of not less than four academic years, and supplying such facilities for clinical and scientific instruction, as shall meet the approval of the Board. The examination shall include but not be limited to the following studies: neurology, chemistry, pathology, anatomy, histology, physiology, embryology, dermatology, diagnosis, microscopy, gynecology, hygiene, eye, ear, nose and throat, orthopody, diagnostic radiology, jurisprudence, palpation, nerve tracing, chiropractic philosophy, theory, teaching and practice

of chiropractic."

Sec. 2. This act shall become effective July 1, 1993.

In the General Assembly read three times and ratified this the 8th day of June, 1987.

H.B. 824

CHAPTER 305

AN ACT TO AMEND CHAPTER 122A TO ALLOW THE NORTH CAROLINA HOUSING FINANCE AGENCY TO TEMPORARILY ADJUST INCOME REQUIREMENTS FOR CERTAIN MULTI-FAMILY HOUSING, TO OWN CERTAIN HOUSING PROJECTS, AND TO CORRECT CERTAIN STATUTORY DRAFTING ERRORS.

The General Assembly of North Carolina enacts:

Section 1. Chapter 122A of the General Statutes is amended by adding a new G.S. 122A-5.8 to read as follows:

"§ 122A-5.8. *Distressed multi-family residential rental housing provisions.*--(a) The General Assembly hereby finds and determines that a serious shortage of decent, safe and sanitary multi-family residential rental housing which persons and families of low and moderate income in the State can afford continues to exist; that it is in the best interests of the State to continue to promote and maintain the viability of such housing and to encourage private enterprise to sponsor, build and rehabilitate additional multi-family residential rental housing for such low and moderate income persons and families; that certain multi-family residential rental housing projects financed by the Agency are currently experiencing financial difficulties due to low occupancy levels; that measures to facilitate higher occupancy levels by extending occupancy on a temporary basis to those with incomes in excess of required low and moderate levels will help to maintain certain multi-family residential rental housing for persons and families of low and moderate income to prevent foreclosure and the use of such facilities without regard to income limitations; and that the Agency in providing such temporary assistance is promoting the health, welfare and property of all citizens of the State and is serving a public purpose for the benefit of the general public.

(b) 'Distressed rental housing project' means any multi-family residential rental housing project heretofore or hereafter financed by the Agency that, as determined by resolution of the Board of Directors of the Agency, has an occupancy level below that required for sustaining operation and as a result thereof needs to increase its

occupancy levels in order to avoid foreclosure and the subsequent use of such facilities without regard to the Agency's income limitations. In determining the foregoing, the Board of Directors of the Agency shall take into consideration (1) occupancy rates of the project, (2) market conditions affecting the project, (3) costs of operation of the project, (4) debt service for the project, (5) management of the project and such other factors as the Board of Directors may deem relevant.

(c) The Board of Directors of the Agency may determine, by resolution, to permit not in excess of ten percent (10%) of the rental units in any distressed rental housing project to be rented to persons or families without regard to income until the first of the following occur (1) occupancy levels, in the judgment of the Agency, will sustain operations at a level sufficient to prevent delinquency or default, or (2) June 30, 1989.

(d) The Board of Directors may also determine, by resolution, to permit additional rental units at any such distressed rental housing project, to be rented to persons or families without regard to income, subject to the restrictions contained in subsections (c)(1) and (c)(2) of this section, provided that: (1) the units therein that have been available for rental without regard to income have been available for a period of time not less than three months, (2) the Agency has determined that permitting additional units, in excess of ten percent (10%), to be rented without regard to income is necessary in order for such distressed rental housing project to avoid foreclosure, and (3) the total number of housing units at any distressed rental housing project rented without regard to income shall not exceed fifteen percent (15%) of the total number of units therein.

(e) Once a distressed rental housing project attains sustaining occupancy at a level satisfactory to the Agency, the Agency will thereafter require the owners of such distressed rental housing project to rent only to persons and families of low and moderate income and will require that any units that were leased without regard to income limitations pursuant to the provisions of this section will next be leased, when such units become vacant, only to persons and families whose incomes fall within the then current Agency income limitations."

Sec. 2. Chapter 122A of the General Statutes is amended by adding a new G.S. 122A-5.9 to read as follows:

"§ 122A-5.9. *Formation of subsidiary corporations to own and operate housing projects.*--(a) The Agency may acquire, by purchase or otherwise, construct, acquire, develop, own, repair, maintain, improve, rehabilitate, renovate, furnish, equip, operate, and manage

residential rental housing projects to rent to persons and families of lower and moderate income.

(b) The Agency may form a nonprofit corporation or corporations under the laws of this State which may acquire, construct, develop, repair, improve, rehabilitate, renovate, furnish, equip, operate and manage residential rental housing projects for persons and families of lower and moderate income. All of the stock of a nonprofit corporation formed by the Agency shall be owned by the Agency and its Board of Directors shall be elected or appointed by the Agency.

(c) No statutory provisions with respect to the acquisition, operation or disposition of property by other public bodies shall be applicable to the Agency or to any nonprofit corporation formed pursuant to this section."

Sec. 3. G.S. 122A-4(f) is amended by inserting a period in lieu of the semicolon following the word "Act" in the fifth sentence thereof and by deleting the remainder of the sentence.

Sec. 4. The provisions of Section 1 of this act shall cease to be effective at midnight on June 30, 1989.

Sec. 5. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 8th day of June, 1987.

H.B. 943

CHAPTER 306

AN ACT TO REVISE THE MANNER OF ELECTION OF THE BOARD OF COMMISSIONERS OF PASQUOTANK COUNTY.

The General Assembly of North Carolina enacts:

Section 1. (a) The Board of Commissioners of Pasquotank County shall be composed of seven members.

(b) In 1988 and quadrennially thereafter, one commissioner shall be elected from the Northern District of the City of Elizabeth City, as defined in Section 2(a) of this act for a four-year term.

(c) In 1986 and quadrennially thereafter, one commissioner shall be elected from the Southern District of the City of Elizabeth City, as defined in Section 2(b) of this act for a four-year term.

(d) In 1986 and quadrennially thereafter, one commissioner shall be elected from the Northern District as defined by Section 2(c) of this act for a four-year term.

(e) In 1988 and quadrennially thereafter, one commissioner shall be elected from the Southern District as defined by Section 2(d) of this act for a four-year term.

(f) In 1986 and quadrennially thereafter, two commissioners shall be elected from Pasquotank County at-large for four-year terms. In 1988 and quadrennially thereafter, one commissioner shall be

elected from Pasquotank County at-large for a four-year term.

(g) For the district seats, the qualified voters of the district shall nominate candidates and elect a member who resides in that district. For the at-large seats, the qualified voters of the entire county shall nominate candidates and elect members who reside in the county.

Sec. 2. (a) The boundaries of the Northern District of the City of Elizabeth City are:

Beginning at the center of the intersection of Edgewood Drive and Parkview Drive which point is also the approximate point of intersection of Parkview Drive and Park Drive; thence in a northwardly direction down the centerline of Park Drive to its point of intersection with the centerline of Rivershore Road; thence along the centerline of Rivershore Road in a northwardly direction to its point of intersection with the centerline of North Williams Circle; thence westwardly along the centerline of North Williams Circle to to a point where same intersects the centerline of West Williams Circle; thence Northwardly along the centerline of West Williams Circle to a point where same intersects the centerline of North Williams Circle; thence southwardly along the centerline of North Williams Circle to a point where same intersects the centerline of Park Street; thence along the centerline of Park Street in a westwardly direction to a point where same intersects the centerline of Southern Avenue; thence in a northwardly direction along the centerline of Southern Avenue to a point where same intersects the centerline of B Street; thence westwardly along the centerline of B Street to a point where same intersects the centerline of Herrington Road; thence northwardly along the centerline of Herrington Road to the point where same intersects the centerline of South Road Street; thence along the centerline of South Road Street in a northwardly direction to a point where the same intersects with the centerline of South Road Street; thence northwardly along the centerline of South Road Street to a point where the same intersects with the centerline of East Church Street; thence in a westerly direction along the centerline of West Church Street to a point where the same intersects with the centerline of Hughes Boulevard; thence in a southwesterly direction along the centerline of Hughes Boulevard to a point where the same intersects with the Norfolk-Southern Railroad track; thence in a westerly direction along the centerline of the Norfolk-Southern Railroad track to a point where the same intersects with the city limits or the Norfolk-Southern Railroad track that runs in a general Northeast-Southwest direction; thence in a northeasterly direction along the Norfolk-Southern Railroad track and binding the city limits of the City of Elizabeth City

following said railroad track to a point where the same intersects with Wilson Street; thence at the intersection of Wilson Street and the Norfolk-Southern Railroad track following the spur off of the main line of the Norfolk Southern Railroad track in a southeasterly direction binding the limits of the City of Elizabeth City to a point where the same intersects with North Road Street; thence following the centerline of North Road Street in a northeasterly direction to a point where the same intersects with Knobbs Creek; thence in a westerly direction following the various meanderings of Knobbs Creek to a point along the city limits of the City of Elizabeth City; thence following the city limits of the City of Elizabeth City in a northerly direction and then in a northeasterly direction; thence in a southerly direction continuing with the city limits of the City of Elizabeth City, its various courses and distances, following the city limits of the City of Elizabeth City to a point where the same intersects with the centerline of River Road; thence westerly along the centerline of River Road to its point of intersection with the centerline of Crescent Drive; thence southwardly along the centerline of Crescent Drive to the point of intersection with the centerline of Parkview Drive; thence westwardly along the centerline of Parkview Drive to the point and place of beginning.

(b) The boundaries of the Southern District of the City of Elizabeth City are:

Beginning at the center of the intersection of West Church Street and South Road Street; thence along the centerline of West Church Street in a westwardly direction to its point of intersection with the centerline of Hughes Boulevard; thence along the centerline of Hughes Boulevard in a southerly direction to its point of intersection with the centerline of Norfolk-Southern Railway right of way (spur track); thence along the centerline of the Norfolk-Southern Railway right of way in a westwardly direction to its point of intersection with the centerline of Norfolk-Southern Railway right of way (spur track); thence along the centerline of the Norfolk-Southern Railway right of way in a westwardly direction to its point of intersection with the city limits of the City of Elizabeth City; thence continuing in a general southwardly direction and eastwardly direction along the city limits of the City of Elizabeth City, its various courses and distances, to where it intersects with River Road; thence from River Road to Crescent Drive; thence along the centerline of Crescent Drive in a westerly direction to a point where the same intersects with Parkview Drive; thence along the centerline of Parkview Drive to a point where the same intersects with Edgewood Drive; thence from the center of the intersection of Edgewood Drive and Parkview Drive which point is

also the approximate point of intersection of Parkview Drive and Park Drive; thence in a northwardly direction down the centerline of Park Drive to its point of intersection with the centerline of Rivershore Road; thence along the centerline of Rivershore Road in a northwardly direction to its point of intersection with the centerline of North Williams Circle; thence westwardly along the centerline of North Williams Circle to a point where same intersects the centerline of West Williams Circle; thence Northwardly along the centerline of West Williams Circle to a point where same intersects the centerline of North Williams Circle; thence southwardly along the centerline of North Williams Circle to a point where same intersects the centerline of Park Street; thence along the centerline of Park Street in a westwardly direction to a point where same intersects the centerline of Southern Avenue; thence in a northwardly direction along the centerline of Southern Avenue to a point where same intersects the centerline of B Street; thence westwardly along the centerline of B Street to a point where same intersects the centerline of Herrington Road; thence northwardly along the centerline of Herrington Road to the point where same intersects the centerline of South Road Street; thence continuing along the centerline of South Road Street in a northerly direction to a point, said point being at the intersection of Church Street and South Road Street, being the said point and place of beginning.

(c) The boundaries of the Northern District are Newland, and those parts of Providence Township and the territory outside of the City of Elizabeth City in Elizabeth City Township.

(d) The boundaries of the Southern District are Salem, and those parts of Nixonton and Mount Hermon Townships outside of the city limits of the City of Elizabeth City.

Sec. 3. Sections 1 and 2 of Chapter 664, Session Laws of 1965 are repealed.

Sec. 4. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 8th day of June, 1987.

H.B. 1093

CHAPTER 307

AN ACT TO PERMIT THE ISSUANCE OF ABC LICENSES TO SPORTS CLUBS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 18B-1000 is amended by adding a new subdivision to read:

"(8) Sports club - An establishment substantially engaged in the business of providing athletic facilities. The sports club can either be open to the general public or for members and their guests. Sports clubs shall only include golf courses. To qualify as a sports club, an establishment's gross receipts for club activities shall be greater than its gross receipts for alcoholic beverages. This provision does not prohibit sports club from operating a restaurant. Receipts for food shall be included in with the club activity fee."

Sec. 2. G.S. 18B-603 is amended by adding a new subsection to read:

"(h) Permits Based on Existing Permits. In any county in which the sale of malt beverage on and off premises, the sale of unfortified wine on and off premises, the sale of mixed beverages, and the operation of an ABC system has been allowed in at least six cities in the county, the Commission may issue permits to sports clubs as defined in G.S. 18B-1000(8) throughout the county. The Commission may issue the following permits:

- (1) On and Off Premises Malt Beverage;
- (2) On and Off Premises Unfortified Wine;
- (3) On and Off Premises Fortified Wine; or
- (4) Mixed Beverage.

Retail establishments holding mixed beverage permits shall purchase their spirituous liquor at the nearest municipal ABC system store."

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 8th day of June, 1987.

H.B. 1168

CHAPTER 308

AN ACT TO CLARIFY THE LEGAL SALE HOURS OF WHOLESALE COMMERCIAL PERMITEES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 18B-1004 is to be amended by adding a new subsection (e) to read:

"(e) This section does not prohibit at any time the wholesale delivery and sale of unfortified wine, fortified wine, and malt beverages to retailers issued permits pursuant to G.S. 18B-1001."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 8th day of June, 1987.

S.B. 693

CHAPTER 309

AN ACT PROCLAIMING THE DESIGNATION OF THE J. ROBERT GORDON SANDHILLS FIELD TRIAL AREA.

The General Assembly of North Carolina enacts:

Section 1. The General Assembly of North Carolina proclaims the designation of the J. Robert Gordon Sandhills Field Trial Area. The North Carolina Wildlife Resources Commission shall continue to so designate this area, and shall ensure that the suitable plaque decreed by the Commission on 25 February 1985 be maintained in proper order.

Sec. 2. The Secretary of State shall send a certified copy of this act to J. Robert Gordon and to the North Carolina Wildlife Resources Commission.

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 8th day of June, 1987.

S.B. 310

CHAPTER 310

AN ACT TO AMEND THE PRODUCT LIABILITY RISK RETENTION GROUP LAW BY REFLECTING THE FEDERAL RISK RETENTION AMENDMENTS OF 1986 IN ORDER TO CARRY OUT THE AUTHORITY GRANTED BY CONGRESS TO THE STATES.

The General Assembly of North Carolina enacts:

Section 1. Article 40, Chapter 58 of the General Statutes is rewritten to read:

"ARTICLE 40.

"Liability Risk Retention.

" § 58-505. *Purpose.*--The purpose of this Article is to regulate the formation and operation of risk retention and purchasing groups in this State that are formed pursuant to the provisions of the Product Liability Risk Retention Act of 1981, as amended by the Risk Retention Amendments of 1986 (15 U.S.C. §3901 *et seq.*).

" § 58-506. *Definitions.*--As used in this Article:

(1) 'Completed operations liability' means liability arising out of the installation, maintenance, or repair of any product at a site that is not owned or controlled by:

a. any person who performs that work; or

b. any person who hires an independent contractor to perform that work;
but includes liability for activities that are completed or abandoned before the date of the occurrence giving rise to the liability.

(2) 'Domicile', for purposes of determining the state in which a purchasing group is domiciled, means:

- a. for a corporation, the state in which the purchasing group is incorporated; and
- b. for an unincorporated entity, the state of its principal place of business.

(3) 'Hazardous financial condition' means that, based on its present or reasonably anticipated financial condition, a risk retention group, although not yet financially impaired or insolvent, is unlikely to be able:

- a. to meet obligations to policyholders with respect to known claims and reasonably anticipated claims; or
- b. to pay other obligations in the normal course of business.

(4) 'Insurance' means primary insurance, excess insurance, reinsurance, surplus lines insurance, and any other arrangement for shifting and distributing risk that is determined to be insurance under the laws of this State.

(5) 'Liability' means legal liability for damages, including costs of defense, legal costs and fees, and other claims expenses, because of injuries to other persons, damage to their property, or other damage or loss to such other persons resulting from or arising out of any profit or nonprofit business, trade, product, professional or other services, premises, or operations; or any activity of any state or local government, or any agency or political subdivision thereof. Liability does not include personal risk liability or an employer's liability with respect to its employees other than legal liability under the Federal Employers' Liability Act (45 U.S.C. §51 *et seq.*).

(6) 'Personal risk liability' means liability for damage because of injury to any person, damage to property, or other loss or damage resulting from any personal, familial, or household responsibilities or activities. Personal risk liability does not include liability as defined in subdivision (5) of this section.

(7) 'Plan of operation' or 'feasibility study' means an analysis that presents the expected activities and results of a risk retention group including, at a minimum:

- a. the coverages, deductibles, coverage limits, rates, and rating classification systems for each kind of insurance the group intends to offer;

- b. historical and expected loss experience of the proposed members and national experience of similar exposures;
- c. *pro forma* financial statements and projections;
- d. appropriate opinions by a qualified, independent casualty actuary, including a determination of minimum premium or participation levels required to commence operations and to prevent a hazardous financial condition;
- e. identification of management, underwriting procedures, managerial oversight methods, and investment policies; and
- f. such other matters as may be prescribed by the Commissioner for liability insurance companies authorized by this Chapter.

(8) 'Product liability' means liability for damages because of any personal injury, death, emotional harm, consequential economic damage, or property damage, including damages resulting from the loss of use of property, arising out of the manufacture, design, importation, distribution, packaging, labeling, lease, or sale of a product; but does not include the liability of any person for those damages if the product involved was in the possession of such person when the incident giving rise to the claim occurred.

(9) 'Purchasing group' means any group that:

- a. has as one of its purposes the purchase of liability insurance on a group basis;
- b. purchases such insurance only for its group members and only to cover their similar or related liability exposure, as described in sub-subdivision c. of this subdivision;
- c. is composed of members whose businesses or activities are similar or related with respect to the liability to which the members are exposed by virtue of any related, similar, or common business, trade, product, services, premises, or operations; and
- d. is domiciled in any state.

(10) 'Risk retention group' means any corporation or other limited liability association formed under the laws of any state, Bermuda, or the Cayman Islands:

- a. whose primary activity consists of assuming and spreading all or any portion of the liability exposure of its group members;
- b. that is organized for the primary purpose of conducting the activity described under sub-subdivision a. of this subdivision;
- c. that

- (i) is chartered and licensed as a liability insurance company and authorized to engage in the business of insurance under the laws of any state; or
 - (ii) before January 1, 1985, was chartered or licensed and authorized to engage in the business of insurance under the laws of Bermuda or the Cayman Islands and, before that date, had certified to the insurance regulator of at least one state that it satisfied the capitalization requirements of such state; except that any such group shall be considered to be a risk retention group only if it has been engaged in business continuously since that date and only for the purpose of continuing to provide insurance to cover product liability or completed operations liability, as such terms were defined in the Product Liability Risk Retention Act of 1981 before the effective date of the Risk Retention Act of 1986;
- d. that does not exclude any person from membership in the group solely to provide for members of such a group a competitive advantage over such person;
- e. that
 - (i) has as its members only persons who have an ownership interest in the group and that has as its owners only persons who are members who are provided insurance by the risk retention group; or
 - (ii) has as its sole member and sole owner an organization that is owned by persons who are provided insurance by the risk retention group;
- f. whose members are engaged in businesses or activities similar or related with respect to the liability of which such members are exposed by virtue of any related, similar, or common business trade, product, services, premises, or operations;
- g. whose activities do not include the provision of insurance other than:
 - (i) liability insurance for assuming and spreading all or any portion of the liability of its group members; and
 - (ii) reinsurance with respect to the liability of any other risk retention group, or any members of such other group, that is engaged in businesses or activities so that such group or member meets the requirement described in sub-subdivision f. of this subdivision from membership in the risk retention group that provides such reinsurance; and

h. the name of which includes the phrase 'Risk Retention Group'.

" § 58-507. *Risk retention groups chartered in this State.*--A risk retention group seeking to be chartered in this State must be chartered and licensed as a liability insurance company authorized by this Chapter and, except as provided elsewhere in this Article, must comply with all of the laws and rules applicable to such insurers chartered and licensed in this State and with G.S. 58-508 to the extent such requirements are not a limitation on laws, administrative rules, or requirements of this State. Before it may offer insurance in any State, each risk retention group shall also submit to the Commissioner, for his approval, a plan of operation or a feasibility study and revisions of such plan or study if the group intends to offer any additional lines of liability insurance.

" § 58-508. *Risk retention groups not chartered in this State.*--Risk retention groups that have been chartered in states other than this State and that seek to do business as risk retention groups in this State must observe and abide by the laws of this State as follows:

(1) Notice of operations and designation of Commissioner as agent. Before offering insurance in this State, a risk retention group shall submit to the Commissioner:

- a. a statement identifying the state or states in which the risk retention group is chartered and licensed as a liability insurance company, date of chartering, its principal place of business, and such other information including information on its membership, as the Commissioner may require to verify that the risk retention group is qualified under G.S. 58-506(10);
- b. a copy of its plan of operations or a feasibility study and revisions of such plan or study submitted to its state of domicile; provided, however, that the provision relating to the submission of a plan of operation or a feasibility study shall not apply with respect to any line or classification of liability insurance that (i) was defined in the Product Liability Risk Retention Act of 1981 before October 27, 1986, and (ii) was offered before that date by any risk retention group that had been chartered and operating for not less than three years before that date;
- c. a statement of registration that designates the Commissioner as its agent for the purpose of receiving service of legal process.

(2) Financial Condition. A risk retention group doing business in this State shall file with the Commissioner:

- a. a copy of the group's financial statement submitted to its state of domicile, which shall be certified by an independent public accountant and contain a statement of opinion on loss and loss adjustment expense reserves made by a member of the American Academy of Actuaries or a qualified loss reserve specialist, under criteria established by the NAIC or by the Commissioner;
- b. a copy of each examination of the risk retention group as certified by the State insurance regulator or public official conducting the examination;
- c. upon request by the Commissioner, a copy of any audit performed with respect to the risk retention group; and
- d. such information as may be required to verify its continuing qualification as a risk retention group under G.S. 58-506(10).

(3) Taxation. (Reserved)

(4) Compliance With Unfair Claims Settlement Practices Law. A risk retention group and its agents and representatives shall comply with G.S. 58-39(5) and G.S. 58-54.4(11).

(5) Deceptive, False, or Fraudulent Practices. A risk retention group shall comply with the provisions of Article 3A of this Chapter and Chapter 75 of the General Statutes regarding deceptive, false, or fraudulent acts or practices.

(6) Examination Regarding Financial Condition. A risk retention group must submit to an examination by the Commissioner to determine its financial condition if the insurance regulator of the jurisdiction in which the group is chartered has not initiated an examination or does not initiate an examination within 60 days after a request by the Commissioner. This examination shall be coordinated to avoid unjustified repetition and conducted in an expeditious manner and in accordance with the Examiner Handbook of the NAIC.

(7) Notice to Purchasers. Any policy issued by a risk retention group shall contain in 10 point type and contrasting color on the front page and the declaration page, the following notice:

‘NOTICE

This policy is issued by your risk retention group. Your risk retention group may not be subject to all of the insurance laws and regulations of your state. State insurance insolvency or guaranty funds are not available for your risk retention group.’

(8) Prohibited Acts Regarding Solicitation or Sale. The following acts by a risk retention group are prohibited:

- a. the solicitation or sale of insurance by a risk retention group to any person who is not eligible for membership in such group; and
- b. the solicitation or sale of insurance by, or operation of, a risk retention group that is in a hazardous financial condition or is financially impaired.

(9) **Prohibition of Ownership By An Insurance Company.** No risk retention group shall be allowed to do business in this State if an insurance company is directly or indirectly a member or owner of such risk retention group, other than in the case of a risk retention group all of whose members are insurance companies.

(10) **Prohibited Coverage.** No risk retention group may offer insurance policy coverage prohibited or not authorized by this Chapter or declared unlawful by the appellate courts of this State.

(11) **Delinquency Proceedings.** A risk retention group not chartered in this State and doing business in this State must comply with a lawful order issued in a voluntary dissolution proceeding or in a delinquency proceeding commenced by a state insurance commissioner if there has been a finding of financial impairment after an examination under G.S. 58-508.

" § 58-509. *Compulsory association.*--(a) No risk retention group is required to join or contribute financially to any insurance insolvency or guaranty fund or similar mechanism in this State; nor shall any risk retention group or its insureds receive any benefit from any such fund for claims arising out of the operations of such risk retention group.

(b) A risk retention group may be required to participate in residual market mechanisms under Articles 25A and 37 of this Chapter.

" § 58-510. *Countersignature not required.*--A policy of insurance issued to a risk retention group or any member of that group is not required to be countersigned as otherwise provided in this Chapter.

" § 58-511. *Purchasing groups; exemption from certain laws relating to the group purchase of insurance.*--Any purchasing group meeting the criteria established under the provisions of 15 U.S.C. § 3901 *et seq.* is exempt from any law of this State relating to the creation of groups for the purchase of insurance, prohibition of group purchasing, or any law that discriminates against a purchasing group or its members. In addition, an insurer is exempt from any law of this State that prohibits providing, or offering to provide, to a purchasing group or its members, advantages based on their loss and expense experience not afforded to other persons with respect to rates, policy forms.

coverages, or other matters. A purchasing group is subject to all other applicable laws of this State.

" § 58-512. *Notice and registration requirements of purchasing groups.*--(a) A purchasing group that intends to do business in this State shall furnish notice to the Commissioner that shall:

- (1) identify the state in which the group is domiciled;
- (2) specify the lines and classifications of liability insurance that the purchasing group intends to purchase;
- (3) identify the insurer from which the group intends to purchase its insurance and the domicile of such insurer;
- (4) identify the principal place of business of the group; and
- (5) provide such other information as may be required by the Commissioner to verify that the purchasing group is qualified under G.S. 58-506(9).

(b) The purchasing group shall register with and designate the Commissioner as its agent solely for the purpose of receiving service of legal documents or process, except that such requirement does not apply in the case of a purchasing group:

- (1) that
 - a. was domiciled before April 2, 1986, in any state of the United States; and
 - b. is domiciled on and after October 27, 1986, in any state of the United States;
- (2) that before October 27, 1986, purchased insurance from an insurer licensed in any state; and since October 27, 1986, purchased its insurance from an insurer licensed in any state;
- (3) that was a purchasing group under the requirements of the Product Liability Retention Act of 1981 before October 27, 1986; and
- (4) that does not purchase insurance that was not authorized for purposes of an exemption under that act, as in effect before October 27, 1986.

" § 58-513. *Restriction on insurance purchased by purchasing groups.*--A purchasing group may not purchase insurance from a risk retention group that is not chartered in a state nor from an insurer not admitted in the state in which the purchasing group is located, unless the purchase is effected through a licensed agent or broker acting pursuant to the surplus lines laws and regulations of such state.

" § 58-514. *Administrative and procedural authority regarding risk retention groups and purchasing groups.*--The Commissioner is authorized to make use of any of the powers established under this Chapter to enforce the laws of this State as long as those powers are

not specifically preempted by the Product Liability Risk Retention Act of 1981, as amended by the Risk Retention Act of 1986. This includes, but is not limited to, the Commissioner's administrative authority to investigate, issue subpoenas, conduct depositions and hearings, issue orders, and seek or impose penalties. With regard to any investigation, administrative proceeding, or litigation, the Commissioner can rely on the procedural law and regulations of the State. The injunctive authority of the Commissioner in regard to risk retention groups is restricted by the requirement that any injunction be issued by a court of competent jurisdiction.

" § 58-515. *Penalties.*--A risk retention group that violates any provision of this Article is subject to G.S. 58-9.7.

" § 58-516. *Duty of agents or brokers to obtain license.*--Any person acting, or offering to act, as an agent or broker for a risk retention group or purchasing group, that solicits members, sells insurance coverage, purchases coverage for its members located within the State, or otherwise does business in this State shall, before commencing any such activity, obtain a license from the Commissioner.

" § 58-517. *Binding effect of orders issued in U.S. District Court.*--An order issued by any district court of the United States enjoining a risk retention group from soliciting or selling insurance, or operating, in any state, or in all states or in any territory or possession of the United States, upon a finding that such a group is in a hazardous financial condition, is enforceable in the courts of this State."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 8th day of June, 1987.

S.B. 397

CHAPTER 311

AN ACT TO PROVIDE FOR DRIVEWAY PERMIT PROCESSES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 136-18 is amended by adding a new subdivision to read:

"(29) The Department of Transportation may establish policies and adopt rules about the size, location, direction of traffic flow, and the construction of driveway connections into any street or highway which is a part of the State Highway System. The Department of

Transportation may require the construction and public dedication of acceleration and deceleration lanes, and traffic storage lanes and medians by others for the driveway connections into any United States route, or North Carolina route, and on any service road route with an average daily traffic volume of 4,000 vehicles per day or more."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 8th day of June, 1987.

S.B. 557

CHAPTER 312

AN ACT TO BROADEN THE COVERAGE OFFERED BY THE
SCHOOL PROPERTY INSURANCE PROGRAM.

The General Assembly of North Carolina enacts:

Section 1. Article 38 of Chapter 115C of the General Statutes is amended by adding a new section to read:

"§ 115C-543. *Other property insurance.*--The State Board of Education may adopt rules for providing property insurance on property insured by the Fund against all risks of direct physical loss not otherwise insured against pursuant to this Article. Losses covered by this additional insurance shall be paid out of the Fund in the same manner as fire and extended coverage losses.

Each local school administrative unit that elects to purchase this additional insurance shall pay a premium in accordance with rates fixed by the Board. This additional insurance shall be subject to the provisions and stipulations on policy forms approved by the State Board."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 8th day of June, 1987.

S.B. 692

CHAPTER 313

AN ACT REGARDING THE ADULTERATION OR
MISBRANDING OF FOOD, DRUGS, OR COSMETICS WITH
INTENT TO CAUSE SERIOUS INJURY OR DEATH.

The General Assembly of North Carolina enacts:

Section 1. Article 8 of Chapter 14 of the General Statutes is amended by adding a new section to read:

"§ 14-34.4. *Adulterated or misbranded food, drugs, or cosmetics; intent to cause serious injury or death; intent to extort.*--(a) Any person who with the intent to cause serious injury or death manufactures,

sells, delivers, offers, or holds for sale, any food, drug, or cosmetic that is adulterated or misbranded, or adulterates or misbrands any food, drug, or cosmetic, in violation of G.S. 106-122, is guilty of a Class C felony.

(b) Any person who with the intent to wrongfully obtain, directly or indirectly, anything of value or any acquittance, advantage, or immunity communicates to another that he has violated, or intends to violate, subsection (a) of this section, is guilty of a Class C felony."

Sec. 2. This act shall become effective October 1, 1987.

In the General Assembly read three times and ratified this the 8th day of June, 1987.

H.B. 416

CHAPTER 314

AN ACT TO AMEND G.S. 130A-80 AND 130A-83 AND
VALIDATING CERTAIN ACTIONS RELATING TO SANITARY
DISTRICTS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 130A-80(6) is hereby amended by deleting in the last sentence thereof the words "resolution or".

Sec. 2. G.S. 130A-83(6) is hereby amended by deleting in the last sentence thereof the words "resolution or".

Sec. 3. All actions and proceedings heretofore taken pursuant to the provisions of G.S. 130A-80 and 130A-83 with respect to the holding of an election on propositions of merger are in all respects validated.

Sec. 4. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 8th day of June, 1987.

H.B. 463

CHAPTER 315

AN ACT TO EQUALIZE THE MOTOR FUELS TAX CREDIT
AND THE RATE OF TAX.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-449.39 reads as rewritten:

"§ 105-449.39. *Credit for payment of motor fuel tax.*--~~Every motor carrier subject to the tax levied by this Article is entitled to a credit against this tax for the amount of tax paid by the carrier under Articles 36 and 36A of this Subchapter on motor fuel or special fuel purchased in this State and used by the carrier in its operations either inside or~~

outside this State. Every motor carrier subject to the tax levied by this Article is entitled to a credit for tax paid on fuel purchased in the State. The credit shall be allowed at a rate equal to fourteen cents (14¢) per gallon plus the wholesale cents-per-gallon rate of tax in effect during the quarter for which the credit is claimed. Evidence of the payment of such tax in such form as may be required by, or is satisfactory to, the Secretary shall be furnished by each such carrier claiming the credit herein allowed. When the amount of the credit herein provided to which any motor carrier is entitled for any quarter exceeds the amount of the tax for which such carrier is liable for the same quarter, such excess may under regulations of the Secretary be allowed as a credit on the tax for which such carrier would be otherwise liable for another quarter or quarters; or upon application within 180 days from the end of any quarter, duly verified and presented, in accordance with regulations promulgated by the Secretary and supported by such evidence as may be satisfactory to the Secretary, such excess may be refunded to said motor carrier.

Unless the Secretary of Revenue exercises his discretion as hereinafter provided, or as provided in G.S. 105-449.40, he shall allow such refund only after an audit of the applicant's records. However, he may, in his sole discretion, make refunds without prior audit or without having been furnished a bond pursuant to G.S. 105-449.40 if the motor carrier has complied with the provisions of this Subchapter and rules and regulations promulgated thereunder for a period of one full prior registration year."

Sec. 2. This act shall become effective July 1, 1987.

In the General Assembly read three times and ratified this the 8th day of June, 1987.

H.B. 608

CHAPTER 316

AN ACT TO AMEND THE ORGANIZATION OF THE STATE BAR AND TO ELIMINATE THE SUNSET PROVISION RELATING TO ATTORNEY DISCIPLINE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 84-17 is amended by deleting the first sentence of the second paragraph.

Sec. 2. G.S. 84-18(a) is amended in the first sentence of the third paragraph by deleting the phrase "or is entitled to a councilor by virtue of the creation of a new district,".

Sec. 3. G.S. 84-19 is rewritten to read:

"§ 84-19. *Judicial districts definition.*--For purposes of this Article, the term 'judicial district' means a judicial district as in existence on

January 1, 1987, and the term 'district bar' means the bar of a judicial district as defined by this section."

Sec. 4. G.S. 84-28(h) is amended by rewriting the fourth sentence to read:

"A final order which imposes disbarment or suspension for 18 months or more shall not be stayed except upon application, under the rules of the Court of Appeals, for a writ of supersedeas."

Sec. 5. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 8th day of June, 1987.

H.B. 729

CHAPTER 317

AN ACT TO AUTHORIZE DUPLIN COUNTY TO LEVY A ROOM OCCUPANCY AND TOURISM DEVELOPMENT TAX.

The General Assembly of North Carolina enacts:

Section 1. Occupancy tax. (a) Authorization and scope. The Duplin County Board of Commissioners may by resolution, after not less than 10 days' public notice and after a public hearing held pursuant thereto, levy a room occupancy tax of up to three percent (3%) of the gross receipts derived from the rental of any room, lodging, or similar accommodation furnished by a hotel, motel, inn, or similar place within the county that is subject to sales tax imposed by the State under G.S. 105-164.4(3). This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations.

(b) Collection. Every operator of a business subject to the tax levied under this section shall, on and after the effective date of the levy of the tax, collect the tax. This tax shall be collected as part of the charge for furnishing a taxable accommodation. The tax shall be stated and charged separately from the sales records, and shall be paid by the purchaser to the operator of the business as trustee for and on account of the county. The tax shall be added to the sales price and shall be passed on to the purchaser instead of being borne by the operator of the business. The county shall design, print, and furnish to all appropriate businesses and persons in the county the necessary forms for filing returns and instructions to ensure the full collection of the tax.

(c) Administration. The county shall administer a tax levied under this section. A tax levied under this section is due and payable to the county finance officer in monthly installments on or before the 15th day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the 15th day of each month, prepare and render a return on a form prescribed by the county. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied.

A return filed with the county finance officer under this section is not a public record as defined by G.S. 132-1 and may not be disclosed except as required by law.

(d) Penalties. A person, firm, corporation, or association who fails or refuses to file the return required by this section shall pay a penalty of ten dollars (\$10.00) for each day's omission. In case of failure or refusal to file the return or pay the tax for a period of thirty 30 days after the time required for filing the return or for paying the tax, there shall be an additional tax, as a penalty, of five percent (5%) of the tax due in addition to any other penalty, with an additional tax of five percent (5%) for each additional month or fraction thereof until the tax is paid.

Any person who willfully attempts in any manner to evade a tax imposed under this section or who willfully fails to pay the tax or make and file a return shall, in addition to all other penalties provided by law, be guilty of a misdemeanor and shall be punishable by a fine not to exceed one thousand dollars (\$1,000), imprisonment not to exceed six months, or both. The board of commissioners may, for good cause shown, compromise or forgive the penalties imposed by this subsection.

(e) Use of tax revenue. Duplin County may use the proceeds of a tax levied under this section only to promote travel and tourism in Duplin County.

(f) Effective date of levy. A tax levied under this section shall become effective on the date specified in the resolution levying the tax. That date must be the first day of a calendar month, however, and may not be earlier than the first day of the second month after the date the resolution is adopted.

(g) Repeal. A tax levied under this section may be repealed by a resolution adopted by the Duplin County Board of Commissioners. Repeal of a tax levied under this section shall become effective on the first day of a month and may not become effective until the end of the fiscal year in which the repeal resolution was adopted. Repeal of a tax levied under this section does not affect a liability for a tax that was

attached before the effective date of the repeal, nor does it affect a right to a refund of a tax that accrued before the effective date of the repeal.

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 8th day of June, 1987.

H.B. 737

CHAPTER 318

AN ACT TO MAKE TECHNICAL AMENDMENTS TO THE RADAR RELIABILITY ACT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 8-50.2(c) reads as rewritten:

"(c) All radio microwave and other electronic speed-measuring instruments shall be tested for accuracy by a technician possessing at least a second-class or general radiotelephone license from the Federal Communications Commission or a certification issued by organizations or committees endorsed by the Federal Communications Commission within a period of ~~six~~ 12 months prior to the alleged violation. A written certificate by such technician showing that the test was made within the required period and that the instrument was accurate shall be competent and prima facie evidence of those facts in any proceeding referred to in subsection (a) of this section.

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 8th day of June, 1987.

H.B. 770

CHAPTER 319

AN ACT TO MODIFY THE HICKORY-CONOVER OCCUPANCY TAX LAW.

The General Assembly of North Carolina enacts:

Section 1. Section 4(a) of Chapter 929 of the 1985 Session Laws (1986) reads as rewritten:

"(a) Any tax levied under this act is due and payable to the levying jurisdiction in monthly installments on or before the 25th day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the 25th day of each month, prepare and render a return on a form prescribed by the taxing city. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied. A return filed under this section is not a public record as

defined by G.S. 132-1 and may not be disclosed except as required by law."

Sec. 2. Sections 6 through 10 of Chapter 929 of the 1985 Session Laws (1986) read as rewritten:

"Sec. 6. Disposition of Taxes Collected. (a) The taxing city shall remit one hundred percent (100%) of the net proceeds of the occupancy tax to the Hickory-Conover Tourism Development ~~Advisory Council~~ Authority. 'Net proceeds' means gross proceeds.

(b) The Hickory-Conover Tourism Development ~~Advisory Council~~ Authority shall allocate 100 percent (100%) of the net proceeds of the occupancy tax in a fiscal year for improving, leasing, constructing, financing, operating, or acquiring facilities and properties as needed to provide for a civic center facility and development of tourism, support services, tourist-related events and any other appropriate activities for providing tourism-related facilities and/or attractions.

(c) Provision of a civic center facility shall be a priority use of funds.

(d) The taxing city shall distribute the amounts due to the Hickory-Conover Tourism Development ~~Advisory Council~~ Authority monthly.

(e) The levying jurisdiction may contract with another governmental unit to collect and disperse the funds directly to the Hickory-Conover Tourism Development ~~Advisory Council~~ Authority.

"Sec. 7. Appointment, Duties of the Hickory-Conover Tourism Development ~~Advisory Council~~ Authority. (a) When the Cities of Hickory and Conover adopt a resolution levying a tax under this act, they shall also adopt a resolution creating a Hickory-Conover Tourism Development ~~Advisory Council~~ Authority. When the City of Goldsboro or Hendersonville adopts a resolution levying a tax under this act, it shall adopt a resolution creating a Tourism Development Advisory Council. The membership of the Hickory/Conover Tourism Development ~~Advisory Council~~ Authority, the membership of the Goldsboro Tourism Development Advisory Council, and the membership of the Hendersonville Tourism Development Advisory Council are as follows:

(1) Three owners/operators of hotels, motels, or other taxable accommodations in the Cities of Hickory and Conover; two of whom shall be appointed by the Hickory City Council and one appointed by Conover City Council. The City of Goldsboro shall appoint three owners/operators of hotels, motels, or other taxable tourism accommodations to its Tourism Development Advisory Council. The City of Hendersonville shall appoint three owners/operators of hotels,

motels, or other taxable tourism accommodations to its Tourism Development Advisory Council.

(2) Three individuals who have demonstrated an interest in convention and tourism development and do not own or operate hotels, motels, or other taxable tourism accommodations, one of whom shall be appointed by the Catawba County Chamber of Commerce, one appointed by the Hickory City Council and one by the Conover City Council. The City of Goldsboro shall appoint three individuals who have demonstrated an interest in conventions and tourism development in the Goldsboro area, and who do not own or operate hotels, motels, or other taxable tourism accommodations. The City of Hendersonville shall appoint to its Tourism Development Advisory Council three individuals who have demonstrated an interest in conventions and tourism development in the Hendersonville area, and who do not own or operate hotels, motels, or other taxable tourism accommodations.

(3) Three ex officio members shall be the City Managers of Hickory and Conover and Executive Vice President of the Catawba County Chamber of Commerce. If other municipal corporations levy the tax and allocate same to the ~~Council~~, Authority, their chief appointed official, as defined in N.C. General Statutes, Chapter 160A, Article 7, Part 2, shall also serve as an ex officio member of the ~~Council~~, Authority. The City of Goldsboro shall appoint three ex officio members which shall include the city manager, the executive vice-president of the Goldsboro Chamber of Commerce, and the mayor of the City of Goldsboro. The City of Hendersonville shall appoint the following three ex officio members to its Tourism Development Advisory Council: a member of the Henderson County Board of Commissioners, the executive vice-president of The Greater Hendersonville Chamber of Commerce, and the mayor of the City of Hendersonville.

(b) All members of the ~~Council~~, Authority shall serve without compensation. Travel expenses, as approved in the annual budget, may be provided by the Hickory-Conover Tourism Development Advisory Council, Authority. Vacancies in the ~~Council~~, Authority shall be filled by the appointing authority of the member creating the vacancy.

(c) Members appointed to fill vacancies shall serve for the remainder of the unexpired term for which they are appointed to fill. Members shall serve three-year terms which will be staggered and may serve no more than two consecutive three-year terms. The members shall elect a chairperson and treasurer, who shall serve for a term of two years. The ~~Council~~, Authority shall meet at the call of the chairperson and shall adopt rules of procedure to govern its meeting as provided by Robert's Rules of Order.

"Sec. 8. Contracts Authorized. (a) The Hickory-Conover Tourism Development ~~Advisory Council~~ Authority may contract with any person, firm, or agency to assist it in carrying out the purposes for which the tax proceeds are levied by this act or other revenues.

(b) The Hickory-Conover Tourism Development ~~Advisory Council~~ Authority shall prepare an annual budget and shall report quarterly and at the close of the fiscal year to the governing body that has jurisdiction of activities pursuant to Section 6(b) and 6(c) of this act on their receipts and expenditures for the preceding quarter and year in such detail as the municipal corporation may require. An audit will be conducted as part of the municipal corporation's audit contract.

"Sec. 9. Repeal of Levy. (a) The Cities of Hickory and Conover may by joint resolution repeal the levy of the room occupancy tax levied by them. The Cities of Goldsboro and Hendersonville may by resolution repeal the levy of the room occupancy tax levied by them. No repeal of taxes levied under this act shall be effective until the end of the fiscal year in which the repeal resolution was adopted.

(b) No liability for any tax levied under this act that attached prior to the date on which a levy is repealed is discharged as a result of the repeal, and no right to a refund of a tax that accrued prior to the effective date on which a levy is repealed may be denied as a result of the repeal.

(c) Notwithstanding the provisions of subsection (a), the Cities of Hickory and Conover may not repeal the levy of the room occupancy tax levied by them if before the effective date of the repeal either City has outstanding indebtedness under Article 4, 5, 8, or 9 of Chapter 159 of the General Statutes for the provision of a civic center facility.

~~"Sec. 10. Legislation enacted to authorize all counties to levy a room occupancy tax repeals this act unless the statewide act specifically exempts this act."~~

Sec. 3. This act applies only to the Cities of Hickory and Conover.

Sec. 4. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 8th day of June, 1987.

H.B. 795

CHAPTER 320

AN ACT TO MAKE TECHNICAL CHANGES TO CHAPTER 126.

The General Assembly of North Carolina enacts:

Section 1. G.S. 126-4(9) is amended by deleting "and the hearing of appeals of applicants, employees, and former employees", and is further amended by deleting "'Reinstatement' as used in this subdivision refers to the reemployment of a former State employee who separated from service in good standing."

Sec. 2. G.S. 126-4(12) is repealed.

Sec. 3. G.S. 126-4(13) is repealed.

Sec. 4. G.S. 126-5(a) is amended by deleting "civil defense" and substituting "emergency management".

Sec. 5. G.S. 126-29 is amended by adding the following to the end:

"Nothing in this Article shall impose liability on any agent or officer of the State for compliance with this provision, notwithstanding any other provision of this Article."

Sec. 6. G.S. 126-34 is amended by deleting "physical disability" in line 3 and substituting "handicapping condition as defined by G.S. 168A-3".

Sec. 7. G.S. 126-36 is amended by deleting the words "physical disability" and replacing them with the words "handicapped condition as defined by G.S. 168A-3".

Sec. 8. G.S. 126-39(1) through (4) are amended by deleting "not" from the first line of each subsection.

Sec. 9. G.S. 126-43 and G.S. 126-44 are repealed.

Sec. 10. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 8th day of June, 1987.

H.B. 898

CHAPTER 321

AN ACT TO PROVIDE THAT A PRINCIPAL ON A BAIL BOND HAS SIXTY DAYS TO APPEAR BEFORE THE COURT TO SATISFY THE COURT AS TO HIS REASONS FOR NONCOMPLIANCE WITH THE BOND CONDITIONS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 15A-544(b), (c), and (d) read as rewritten:

"(b) If the principal does not comply with the conditions of the bail bond, the court having jurisdiction must enter an order declaring the bail to be forfeited. If forfeiture is ordered by the court, a copy of the order of forfeiture and notice that judgment will be entered upon the order after ~~30~~ 60 days must be served on each obligor. Service is to be made by the sheriff by delivery of the order and notice to him or by delivery at his dwelling house or place of abode with some person of suitable age and discretion residing therein. If the sheriff is unable

to effect service because an obligor cannot be found or has no dwelling house or place of abode known to the sheriff, he must file a return to this effect; the clerk must then mail a copy of the order of forfeiture and notice to the obligor at his address of record and note on the original the date of mailing. Service is complete three days after the mailing.

(c) If the principal does not appear before the court having jurisdiction within ~~30~~ 60 days of the date of service, or on the first day of the next session of court commencing more than ~~30~~ 60 days after the date of service, and satisfy the court that his appearance on the date set was impossible or that his failure to appear was without his fault, the court must enter judgment for the State against the principal and his sureties for the amount of the bail and the costs of the proceedings. If the principal appears within the time allowed following the date of service and satisfies the court that his appearance on the date set was impossible or that his failure to appear was without his fault, the order of forfeiture must be set aside. If the principal appears but is unable to satisfy the court that his appearance on the date set was impossible or that his failure to appear was without his fault, but the court determines that justice does not require the forfeiture of the full amount of the bond, the court may enter judgment in an amount it considers appropriate.

(d) To facilitate the procedure under this section, the clerk in each county must present a forfeiture roll at the first session of superior court commencing more than ~~30~~ 60 days after the entry of any order of forfeiture in either the district or superior court. The forfeiture roll must list the names of all principals as to which forfeiture has been ordered in the county in the past three years and as to which judgments of forfeiture against obligors have not been entered or, if entered, not yet satisfied by execution. In addition, the forfeiture roll must show the amount of the bond ordered forfeited in each case and the names of all sureties liable on each bond."

Sec. 2. This act shall become effective October 1, 1987.

In the General Assembly read three times and ratified this the 8th day of June, 1987.

H.B. 902

CHAPTER 322

AN ACT TO PROVIDE FOR THE ELECTION OF THE MCDOWELL COUNTY BOARD OF EDUCATION FOR FOUR-YEAR TERMS, AND TO CHANGE THE ELECTION FROM NOVEMBER TO MAY.

The General Assembly of North Carolina enacts:

Section 1. Notwithstanding the provisions of G.S. 115C-37, the McDowell County Board of Education shall be elected on a nonpartisan basis at the time of the primary election in 1988 and biennially thereafter. The names of the candidates shall be printed on the ballot without reference to any party affiliations. The nonpartisan election and runoff election method shall be used with the results determined as provided in G.S. 163-293, except that the runoff shall be held on the date provided by G.S. 163-111(e).

Sec. 2. This act does not affect the terms of office of current members of the McDowell County Board of Education.

Sec. 3. Beginning with members elected in 1988, members of the McDowell County Board of Elections shall serve four-year terms, except that in the 1992 election, for the four Marion district seats up for election that year, the three highest vote-getters shall be elected for four-year terms, and the next highest vote-getter shall be elected for a two-year term. In the case persons receive an equal number of votes for third and fourth place, and both are elected, the McDowell County Board of Elections shall decide the length of term by lot.

Sec. 4. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 8th day of June, 1987.

H.B. 1023

CHAPTER 323

AN ACT PROVIDING THAT THE PSYCHOLOGIST-CLIENT PRIVILEGE IS WAIVED FOR CHILD ABUSE REPORTS TO THE SAME EXTENT AS THE PHYSICIAN-PATIENT AND HUSBAND-WIFE PRIVILEGES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 7A-551 reads as rewritten:

"§ 7A-551. Privileges not grounds for excluding evidence.--Neither the physician-patient privilege, the psychologist-client privilege, nor the husband-wife privilege shall be grounds for excluding evidence of abuse or neglect in any judicial proceeding (civil, criminal, or

juvenile) in which a juvenile's abuse or neglect is in issue nor in any judicial proceeding resulting from a report submitted under this Article, both as said privileges relate to the competency of the witness and to the exclusion of confidential communications."

Sec. 2. G.S. 8-53.3 is amended by adding a new paragraph at the end of the section, to read:

"Notwithstanding the provisions of this section, the psychologist-client privilege shall not be grounds for excluding evidence regarding the abuse or neglect of a child, or an illness of or injuries to a child, or the cause thereof, in any judicial proceeding related to a report pursuant to the Child Abuse Reporting Law, Article 44 of Chapter 7A of the General Statutes."

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 8th day of June, 1987.

S.B. 544

CHAPTER 324

AN ACT TO AUTHORIZE THE DOT TO EXCHANGE UNECONOMIC REMNANTS CREATED BY HIGHWAY CONSTRUCTION.

The General Assembly of North Carolina enacts:

Section 1. Chapter 136 of the General Statutes is amended by adding a new section to read:

"§ 136-44.15. *Uneconomic land remnant exchange.*--For the purpose of lessening the adverse impact to tracts of land divided by the construction of a highway project on right-of-way donated by the abutting property owner, the Department of Transportation is authorized to acquire in fee simple the remnants of such divided tracts which cannot feasibly be used with the principal tract of land, for the purpose of exchange with other such property owners. The sole consideration for the acquisition of any remnant acquired pursuant to this act shall be the exchange of another remnant acquired for the same purpose without additional monetary consideration."

Sec. 2. This act is effective upon ratification and shall expire June 30, 1988.

In the General Assembly read three times and ratified this the 9th day of June, 1987.

S.B. 780

CHAPTER 325

AN ACT TO EXEMPT BUSINESSES WITH A NET WORTH OF MORE THAN FIVE MILLION DOLLARS FROM THE REQUIREMENTS OF THE BUSINESS OPPORTUNITY SALES REQUIREMENTS OF CHAPTER 66 OF THE GENERAL STATUTES.

The General Assembly of North Carolina enacts:

Section 1. Section 66-94.1 reads as rewritten:

"§ 66-94.1. *Responsible sellers exemption.*--(a) The provisions of Article 19 shall not apply to the sale or lease of any products, equipment, supplies or services where:

- (1) The seller has not derived net income from such sales within the State during either of its two previous fiscal years, and does not intend to derive net income from such sales during its current fiscal year; and
- (2) The primary commercial activity of the seller or its affiliate is substantially different from the sale of the goods or services to the purchaser, and the gross revenues received by the seller from all such sales during the current and each of the two previous fiscal years do not exceed ten percent (10%) of the total gross revenues from all operations for the same period of the seller and any other affiliated entity contractually obligated to compensate the purchaser for the purchaser's business activities arising from the sale; and
- (3) The sale results in an improvement to realty owned or leased by the purchaser which enables the purchaser to receive goods on consignment from the seller or its affiliate. An 'improvement to realty' occurs when a building or other structure is constructed or when significant improvements to an existing building or structure are made; and
- (4) The seller has either a net worth on a consolidated basis, according to its most recent audited financial statement, of not less than five million dollars (\$5,000,000) or has obtained a surety bond from a surety company authorized to do business in this State in an amount equal to or greater than the gross revenues received from the sale or lease of products, equipment, supplies or services in this State during the preceding 12-month period which enabled the purchaser to start a business.

~~(b) Any seller satisfying the requirements of subsection (a) shall file with the Secretary of State two copies of a document signed under oath by the seller or one authorized to sign on behalf of the seller containing the following information:~~

- ~~(1) The name of the seller and whether the seller is doing business as an individual, partnership or corporation;~~
- ~~(2) The principal business address of the seller;~~
- ~~(3) A brief description of the products, equipment, supplies or services being sold or leased by the seller; and~~
- ~~(4) A statement which explains the manner in which each of the requirements of subsection (a) are met."~~

~~The provisions of Article 19 shall not apply to the sale or lease of any products, equipment, supplies, or services where:~~

- ~~(1) The seller has a net worth on a consolidated basis, according to its most recent audited financial statement, of not less than five million dollars (\$5,000,000); and~~
- ~~(2) The primary commercial activity of the seller is motor carrier transportation and the seller is subject to the jurisdiction of the Interstate Commerce Commission or any other federal agency that regulates motor carrier transportation.~~

~~(c) Any seller satisfying the requirements of subsections (a) or (b) of this section shall file with the Secretary of State two copies of a document signed under oath by the seller or one authorized to sign on behalf of the seller containing the following information:~~

- ~~(1) The name of the seller and whether the seller is doing business as an individual, partnership, or corporation;~~
- ~~(2) The principal business address of the seller;~~
- ~~(3) A brief description of the products, equipment, supplies, or services being sold or leased by the seller; and~~
- ~~(4) A statement which explains the manner in which each of the requirements of subsections (a) or (b) of this section are met."~~

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 9th day of June, 1987.

H.B. 538

CHAPTER 326

AN ACT TO AMEND THE EDUCATIONAL REQUIREMENTS FOR LICENSURE OF PRACTICING PSYCHOLOGISTS AND TO ALLOW LICENSURE OF PSYCHOLOGISTS TRAINED IN FOREIGN EDUCATIONAL INSTITUTIONS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 90-270.11(a)(1)c, is rewritten to read as follows:

"c. Has received a doctoral degree based on a planned and directed program of studies in psychology from an accredited educational institution; and subsequent to receiving a doctoral degree has had at least two years of acceptable and appropriate supervised experience germane to his/her area of practice as a psychologist. The Board shall adopt rules and regulations implementing and defining these provisions, including but not limited to such factors as residence in the program, internship and related field experiences, numbers of course credits, course content, numbers and qualifications of faculty, and program identification and identity."

Sec. 2. G.S. 90-270.11 is amended by adding thereto a new subsection (d) to read as follows:

"(d) Foreign Graduates. Applicants trained in institutions outside the United States, applying for licensure at either the practicing psychologist or psychological associate level, must show satisfactory evidence of training and degrees equivalent to those required of applicants trained within the United States, pursuant to Board rules and regulations."

Sec. 3. This act shall become effective on July 1, 1987, except that applicants applying for licensure as practicing psychologists on or before July 1, 1993, who receive their degrees after July 1, 1987, and who were enrolled in doctoral training programs on or before December 31, 1987, and applicants applying for licensure as practicing psychologists on or before July 1, 1989, shall be evaluated according to statutory provisions and Board rules and regulations in effect on June 30, 1987.

In the General Assembly read three times and ratified this the 9th day of June, 1987.

H.B. 625

CHAPTER 327

AN ACT TO AMEND CHAPTER III OF THE CHARTER OF THE CITY OF HIGH POINT RELATING TO POLICE PENSIONS.

The General Assembly of North Carolina enacts:

Section 1. Chapter III, of the Charter of the City of High Point, as set forth in Chapter 501 of the Session Laws of 1979 as reorganized under G.S. 160A-496 to include Chapter 496, Session Laws of 1955, as amended, is amended by adding a new section

following section 3-108 as follows:

"Sec. 3-109. Procedure for Transfer to the North Carolina Governmental Employees Retirement System. Should sixty percentum (60%) of the full-time paid members of the Policemen's Pension and Disability Fund of the City of High Point elect to become members of the North Carolina Local Governmental Employees' Retirement System by a petition duly signed by such members, the participation of such members in the Retirement System may be approved as provided in G.S. 128-24 as though such local pension system were not in operation, and the provisions of Article 3 of Chapter 128 of the General Statutes shall also apply, except that the existing pensioners or annuitants of the local pension system who were being paid pensions on the date of the approval shall be continued and paid at their existing rates by the North Carolina Local Governmental Employees' Retirement System, and the liability on this account shall be included in the computation of the accrued liability by the actuary as provided by G.S. 128-30(d). Any cash and securities to the credit of the local pension system shall be transferred to the North Carolina Local Governmental Employees' Retirement System as of the date of the approval. The trustees or other administrative head of the local pension system as of the date of the approval shall certify the proportion, if any, of the funds of the System that represents the accumulated contributions of the members, and the relative shares of the members as of that date. Such shares shall be credited to the respective annuity savings accounts of such members in the North Carolina Local Governmental Employees' Retirement System. The balance of the funds transferred to the North Carolina Local Governmental Employees' Retirement System shall be offset against the accrued liability before determining the special accrued liability contribution to be paid by the city as provided by G.S. 128-30(d). The operation of the local pension system shall be discontinued as of the date of the approval. Should the members of the Policemen's Pension and Disability Fund of the City of High Point become members of the North Carolina Local Governmental Employees' Retirement System, the governing body of the City of High Point may provide for its employees to receive prior service credit in the North Carolina Local Governmental Employees' Retirement System equal to the period of prior service credit which such employee has in the Policemen's Pension and Disability Fund of the City of High Point at the time said fund is merged into the Local Governmental Employees' Retirement System, and no other prior credit service shall be given for service with the High Point Police Department."

Sec. 2. All laws and clauses of law in conflict herewith, to the extent of such conflict, shall be inapplicable to the participation of the Policemen's Pension and Disability Fund of the City of High Point in the Local Governmental Employees' Retirement System.

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 9th day of June, 1987.

H.B. 1165

CHAPTER 328

AN ACT TO REQUIRE THAT STATE ALLOTTED AND OTHER
FULL-TIME ASSISTANT PRINCIPALS MEET THE
CERTIFICATION REQUIREMENTS APPLICABLE TO
PRINCIPALS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 115C-289 reads as rewritten:

" § 115C-289. *Assignment of principal's duties to assistant or acting principal.*--(a) Any duty or responsibility assigned to a principal by statute, State Board of Education regulation, or by the superintendent may, with the approval of the local board of education, be assigned by the principal to an assistant principal designated by the local board of education or to an acting principal designated by a principal.

(b) Except as provided in subsection (c), all persons employed as assistant principals in State-allotted positions, or as assistant principals in full-time positions regardless of funding source, in the public schools of the State or in schools receiving public funds, shall, in addition to other applicable requirements, be required either to hold or be qualified to hold a principal's certificate in compliance with applicable law and in accordance with the regulations of the State Board of Education. Except as provided in subsection (c), it shall be unlawful for any board of education to employ or keep in service any assistant principal who neither holds nor is qualified to hold a principal's certificate in compliance with applicable law and in accordance with the regulations of the State Board of Education. Nothing herein shall prevent the employment of temporary personnel under such rules as the State Board of Education may prescribe.

(c) Subsection (b) shall not apply to any person who was employed as an assistant principal in either a full- or part-time position during the 1986-87 school term until the first day of the 1990-91 school term. Such persons shall meet all other requirements which are applicable to teachers generally. In addition, the local board of

education may in its discretion require that any person employed as an assistant principal make satisfactory progress, as determined by the local board, toward meeting the requirements for certification as a principal."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 9th day of June, 1987.

S.B. 319

CHAPTER 329

AN ACT TO AUTHORIZE THE CITY MANAGER OF CHARLOTTE TO WAIVE THE REQUIREMENT FOR BID DEPOSITS ON BIDS FOR EQUIPMENT, MATERIAL, AND SUPPLIES, AND CONCERNING CONSTRUCTION OF MECKLENBURG STADIUM.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143-129 is amended by adding the following after the eighth paragraph: "In the case of contracts for the purchase of apparatus, supplies, material, or equipment, where the estimated purchase price does not exceed one hundred thousand dollars (\$100,000), the City Manager may waive the requirement for bid deposits or bid bonds."

Sec. 2. In recognition of the unique public-private partnership with regard to Mecklenburg Stadium at Price Park, construction of that facility is not subject to Article 8 of Chapter 143 of the General Statutes and Article 3 of Chapter 44A of the General Statutes.

Sec. 3. All laws and clauses of law in conflict with this act are repealed.

Sec. 4. This act applies to the City of Charlotte only.

Sec. 5. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 10th day of June, 1987.

S.B. 459

CHAPTER 330

AN ACT TO ALLOW NORTH CAROLINA COMMERCIAL FISHERMEN TO FORM HULL INSURANCE, AND PROTECTION AND INDEMNITY CLUBS.

The General Assembly of North Carolina enacts:

Section 1. Chapter 58 of the General Statutes is amended by adding a new Article to read:

"Article 31A.

"Hull Insurance, and Protection and Indemnity Clubs.

" § 58-340.1. *Short title.*--This Article may be cited as the 'Commercial Fishermen's Hull Insurance, and Protection and Indemnity Club Act'.

" § 58-340.2. *Definition.*--For purposes of this Article:

(1) 'Association' means a trade or professional association that has been in existence for at least five years, and has adopted a written constitution, and a written set of bylaws, and was created for purposes other than for participating in a club.

(2) 'Club' means a commercial fishermen's hull insurance and protection and indemnity club created under this Article.

(3) 'Commercial fisherman' means any individual, corporation, or other business entity whose earned income is at least fifty percent (50%) derived from taking and selling food resources living in any ocean, bay, river, gulf, estuary, tidal wetlands, spoil area, estuation exit or entrance, or any other body of water or tidal wetlands from which a commercial harvest of fish may be taken.

(4) 'Hull Insurance and Protection and Indemnity' means:

- a. insurance against loss or damage to a vessel's hull, lifeboats, rafts, and other operating equipment of the vessel other than its electrical machinery; and
- b. insurance against loss of life, personal injury, or illness to the master, the crew, and other third parties, and against damage to any other vessel or property, such as cargo, for which the insured is legally liable.

" § 58-340.3. *Commercial Fishermen Hull Insurance, and Protection and Indemnity Clubs authorized.*--In addition to other authority granted under this Chapter, 10 or more commercial fishermen who are members of an association may enter into contracts or agreements under this Article for the joint protection and retention of their risk for Hull Insurance, and Protection and Indemnity, and for the payment of losses or claims made against any member. Any group of commercial fishermen intending to organize and operate a Club under this Article shall give the Commissioner 30 days' advance written notification of its intention in a form prescribed by the Commissioner.

" § 58-340.4. *Board of trustees.*--(a) A Club shall be operated by a board of trustees. Each trustee shall also be a member of an association. The trustees shall be selected by the Club members under the rules of organization of the Club. The board of trustees shall:

- (1) establish the terms and conditions of hull insurance and protection and indemnity coverage within the Club, including underwriting and exclusions of coverage;
 - (2) ensure that all valid claims are paid promptly;
 - (3) take all necessary precautions to safeguard the assets of the Club;
 - (4) maintain minutes of its meeting and make those minutes available to the Commissioner;
 - (5) designate an administrator to carry out the policies established by the trustees; and
 - (6) establish guidelines for membership in the Club.
- (b) The board of trustees shall not:
- (1) extend credit to an individual member for payment of a premium, except under a payment plan approved by the Commissioner; or
 - (2) borrow money from the Club, or in the name of the Club, except in the ordinary course of business.

Whenever the board of trustees borrow money from the Club as authorized by this subdivision it shall first advise the Commissioner of the nature and purpose of the loan, and shall obtain his prior approval of such loan.

" § 58-340.5. *Mutual agreement for indemnification.*--(a) An agreement made under this Article shall contain provisions for:

- (1) a system or program of loss control;
 - (2) the termination of membership;
 - (3) the payment by the Club of all claims for which a member incurred liability during the period of his membership;
 - (4) the non-payment of claims where a member has individually retained the risk, or where the risk is not specifically covered, or where the amount of the claim exceeds the coverage provided by the Club;
 - (5) the assessment of members;
 - (6) the payment of contributions from members to satisfy deficiencies;
 - (7) the maintenance of claim reserves equal to known incurred losses and loss adjustment expenses and to an estimate of incurred but not reported losses; and
 - (8) final accounting and settlement of the obligations or refunds to a terminating member when all incurred claims are settled.
- (b) The agreement required by this section may also include provisions authorizing the Club to:

- (1) to establish offices where necessary in this State, and employ necessary staff to carry out its purposes;
- (2) retain legal counsel, actuaries, claims adjusters, auditors, engineers, private consultants, and advisors, and other persons as the board of trustees or the administrator deem to be necessary;
- (3) amend or repeal its bylaws;
- (4) purchase, lease, or rent real and personal property as it deems necessary; and
- (5) enter into agreements with financial institutions that permit it to issue checks or other negotiable instruments in its own name.

" § 58-340.6. *Termination of Club membership; notice.*--If a member fails to pay his contributions calls, or assessment, or other property required by the board of trustees as authorized by this Article, he shall not be entitled to any hull insurance and protection and indemnity coverage under this Article, and the Club may terminate his membership upon giving the member at least 10 days' notice. The Club may terminate a membership for any other reason upon giving the member at least 90 days' written notice of the termination. A member may terminate his membership with the Club upon giving at least 90 days' written notice of the termination.

" § 58-340.7. *Financial monitoring and evaluation of clubs.*--Each club shall be audited annually, at the Club's expense, by a certified public accounting firm. A copy of the audit report shall be furnished to each member, and to the Commissioner. The trustees shall obtain an appropriate actuarial evaluation of the loss and loss adjustment expenses reserves of the Club, including estimate of losses and loss adjustment expenses incurred but not reported. The provisions of G.S. 58-16 (examination of companies by the Commissioner before authority to transact business granted), G.S. 58-17 (affidavit of compliance with law required), G.S. 58-18.1 (immunity from liability for reporting insurance fraud), G.S. 58-21 (annual, semiannual, or quarterly statements filed with the Commissioner), G.S. 58-22 (punishment for false statement), G.S. 58-25 (making and keeping business records for the Commissioner's inspection), G.S. 58-25.1 (Commissioner's authority to require special reports), G.S. 58-27 (exhibition of books, accounts and other papers to the Commissioner), and G.S. 58-63 (Commissioner authorized to collect and pay fees and charges for examination to State Treasury) shall apply to each Club and to persons that administer the Clubs.

" § 58-340.8. *Insolvency or impairment of Club.*--(a) If an annual audit or an examination by the Commissioner reveals that the assets of a Club are insufficient to discharge its legal liabilities and other obligations, the Commissioner shall notify the administrator and board of trustees of the Club's deficiency; and he shall recommend the measures to be taken in order to abate the deficiency. He may recommend that the Club refrain from adding new members until the deficiency is abated. If the Club fails to comply with the recommendations within 30 days after the date of the notice, the Commissioner may apply to the Superior Court of Wake County for an order requiring the Club to abate the deficiency and authorizing the Commissioner to appoint one or more special deputy commissioners, counsel, clerks, or assistants to oversee the implementation of the Court's order. The compensation and expenses of such persons shall be fixed by the Commissioner, subject to the approval of the Court, and shall be paid out of the funds or assets of the Club.

(b) If a Club is determined to be insolvent, financially impaired, or is otherwise unable to discharge its legal liabilities and other obligations, each member shall be assessed on a pro rata basis as provided under G.S. 58-340.4.

" § 58-340.9. *Immunity of administrators and boards of trustees.*-- There is no liability on the part of and no cause of action arises against any board of trustees established under this Article, or against any administrator appointed as their representative, or any Club, its members or its employees, agents, contractors, or subcontractors for any good faith action taken by them in the performance of their powers and duties in creating or administering any Club under this Article."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 10th day of June, 1987.

S.B. 462

CHAPTER 331

AN ACT TO PROVIDE STANDARDS FOR LONG-TERM CARE INSURANCE.

The General Assembly of North Carolina enacts:

Section 1. General Statute Chapter 58 is amended by adding a new Article to read:

"ARTICLE 42.

"Long-Term Care Insurance.

" § 58-540. *Short title.*--This Article may be cited as the 'Long-Term Care Insurance Act'.

" § 58-541. *Purposes.*--The purposes of this Article are to promote the public interest, to promote the availability of long-term care insurance policies, to protect applicants for long-term care insurance from unfair or deceptive sales or enrollment practices, to establish standards for long-term care insurance, to facilitate public understanding and comparison of long-term care insurance policies, and to facilitate flexibility and innovation in the development of long-term care insurance coverage.

" § 58-542. *Scope.*--This Article applies to new and renewed long-term care insurance policies delivered or issued for delivery in this State on or after September 1, 1987. This Article is not intended to supersede the obligations of any person subject to its provisions to comply with other applicable laws and rules if such laws and rules do not conflict with this Article. The laws and rules established to govern the medicare supplement insurance policies shall not apply to long-term care insurance. A policy that is not advertised, marketed, or offered as long-term care insurance or nursing home insurance is not subject to this Article.

" § 58-543. *Definitions.*--As used in this Article:

(1) 'Applicant' means:

- a. In the case of an individual long-term care insurance policy, the person who seeks to contract for benefits; and
- b. In the case of a group long-term care insurance policy, the proposed certificate holder.

(2) 'Certificate' means any certificate issued under a group long-term care insurance policy, which policy has been delivered or issued for delivery in this State.

(3) 'Group long-term care insurance' means a long-term care insurance policy that is delivered or issued for delivery in this State and issued to:

- a. One or more employers or labor organizations, or to a trust or to the trustees of a fund established by one or more employers or labor organizations, or both, for employees or former employees or both, or for members or former members or both, of the employers or labor organizations; or
- b. Any professional, trade, or occupational association for its members or former or retired members, or all, if such association:

- (i) Comprises individuals all of whom are or were actively engaged in the same profession, trade, or occupation; and
 - (ii) Has been maintained in good faith for purposes other than obtaining insurance; or
 - c. An association or to a trust or to the trustee or trustees of a fund established, created, or maintained for the benefit of members of one or more associations. Prior to advertising, marketing, or offering such policy within this State, the association or associations, or the insurer of the association or associations, shall file evidence with the Commissioner that the association or associations have at the outset a minimum of 100 persons and have been organized and maintained in good faith for purposes other than that of obtaining insurance; have been in active existence for at least one year; and have a constitution and bylaws which provide that (i) the association or associations hold regular meetings not less than annually to further purposes of the members, (ii) except for credit unions, the association or associations collect dues or solicit contributions from members, and (iii) the members have voting privileges and representation on the governing board and committees. Thirty days after such filing the association or associations will be deemed to have satisfied such organizational requirements, unless the Commissioner makes a finding that the association or associations do not satisfy those organizational requirements.
 - d. A group other than as described in subdivisions (3)a., (3)b., and (3)c. of this section, subject to a finding by the Commissioner that:
 - (i) The issuance of the group policy is not contrary to the best interest of the public;
 - (ii) The issuance of the group policy would result in economies of acquisition or administration; and
 - (iii) The benefits are reasonable in relation to the premiums charged.
- (4) 'Long-term care insurance' means any policy or certificate advertised, marketed, offered, or designed to provide coverage for not less than 12 consecutive months for each covered person on an expense incurred, indemnity, prepaid, or other basis, for one or more necessary or medically necessary diagnostic, preventive, therapeutic, rehabilitative, maintenance, or personal care services, provided in a setting other than an acute care unit of a hospital. 'Long-term care insurance' includes group and individual policies whether issued by

insurers, fraternal benefit societies, nonprofit health, hospital, and medical service corporations, prepaid health plans, health maintenance organizations, or any similar organization. 'Long-term care insurance' does not include any policy that is offered primarily to provide basic Medicare supplement coverage, basic hospital expense coverage, basic medical-surgical expense coverage, hospital confinement indemnity coverage, major medical expense coverage, disability income protection coverage, accident only coverage, specified disease or specified accident coverage, or limited benefit health coverage.

(5) 'Policy' means any policy, contract, certificate, subscriber agreement, rider, or endorsement delivered or issued for delivery in this State by an insurer, fraternal benefit society, nonprofit health, hospital or medical service corporation, prepaid health plan, health maintenance organization, or any similar organization.

" § 58-544. *Limits of group long-term care insurance.*--No group long-term care insurance coverage may be offered to a resident of this State under a group policy issued in another state to a group described in G.S. 58-543(3)(d), unless the Commissioner or the insurance regulator of the other state having statutory and regulatory long-term care insurance requirements substantially similar to those adopted in this State has made a determination that such requirements have been met.

" § 58-545. *Disclosure and performance standards for long-term care insurance.*--(a) The Commissioner may adopt rules that include standards for full and fair disclosure setting forth the manner, content, and required disclosures for the sale of long-term care insurance policies, terms of renewability, initial and subsequent conditions of eligibility, nonduplication of coverage provisions, coverage of dependents, pre-existing conditions, termination of insurance, probationary periods, limitations, exceptions, reductions, elimination periods, requirements for replacement, recurrent conditions, and definitions of terms.

(b) No long-term care insurance policy may:

- (1) Be cancelled, nonrenewed, or otherwise terminated on the grounds of the age or the deterioration of the mental or physical health of the insured individual or certificate holder; or
- (2) Contain a provision establishing a new waiting period in the event existing coverage is converted to or replaced by a new or other form within the same company, except with respect to an increase in benefits voluntarily selected by the insured individual or group policyholder.

(c) Pre-existing condition:

- (1) No long-term care insurance policy or certificate shall use a definition of 'pre-existing condition' that is more restrictive than the following: pre-existing condition means the existence of symptoms that would cause an ordinarily prudent person to seek diagnosis, care or treatment, or a condition for which medical advice or treatment was recommended by, or received from a provider of health care services, within the following limitation periods:
 - a. Six months preceding the effective date of coverage of an insured person who is 65 years of age or older on the effective date of coverage; or
 - b. Twenty-four months preceding the effective date of coverage of an insured person who is under age 65 on the effective date of coverage.
 - (2) No long-term care insurance policy may exclude coverage for a loss or confinement that is the result of a pre-existing condition unless such loss or confinement begins with the following periods:
 - a. Six months following the effective date of coverage of an insured person who is 65 years of age or older on the effective date of coverage; or
 - b. Twenty-four months following the effective date of coverage of an insured person who is under 65 on the effective date of coverage.
 - (3) The Commissioner may extend the limitation periods set forth in subdivisions (c)(1) and (2) of this section as to specific age group categories in specific policy forms upon findings that the extension is in the best interest of the public.
 - (4) The definition of 'pre-existing condition' does not prohibit an insurer from using an application form designed to elicit the complete health history of an applicant, and, on the basis of the answers on that application, from underwriting in accordance with that insurer's established underwriting standards.
- (d) No long-term care insurance policy that provides benefits only following institutionalization shall condition such benefits upon admission to a facility for the same or related conditions within a period of less than 30 days after discharge from the institution.
- (e) The Commissioner may adopt rules establishing loss ratio standards for long-term care insurance policies, provided that a specific reference to long-term care insurance policies is contained in

the rules.

(f) An individual long-term care insurance policyholder has the right to return the policy within 10 days of its delivery and to have the premium refunded if, after examination of the policy, the policyholder is not satisfied for any reason. Individual long-term care insurance policies shall have a notice prominently printed on the first page of the policy or attached thereto stating in substance that unless the policyholder has received benefits under the policy, the policyholder has the right to return the policy within 10 days of its delivery and to have the premium refunded if, after examination of the policy, the policyholder is not satisfied for any reason.

(g) A person insured under a long-term care insurance policy issued pursuant to a direct response has the right to return the policy within 30 days of its delivery and to have the premium refunded if, after examination, the insured person is not satisfied for any reason. Long-term care insurance policies issued pursuant to a direct response solicitation shall have a notice prominently printed on the first page or attached thereto stating in substance that unless the insured person has received benefits under the policy, the insured person shall have the right to return the policy within 30 days of its delivery and to have the premium refunded if after examination the insured person is not satisfied for any reason.

(h) An outline of coverage shall be delivered to an applicant for an individual long-term care insurance policy at the time of application for an individual policy. In the case of direct response solicitations, the insurer shall deliver the outline of coverage upon the applicant's request; but regardless of request shall make such delivery no later than at the time of policy delivery. Such outline of coverage shall include:

- (1) A description of the principal benefits and coverage provided in the policy;
- (2) A statement of the principal exclusions, reductions, and limitations contained in the policy;
- (3) A statement of the renewal provisions, including any reservation in the policy of a right to change premiums; and
- (4) A statement that the outline of coverage is a summary of the policy issued or applied for, and that the policy should be consulted to determine governing contractual provisions.

(i) A certificate issued pursuant to a group long-term care insurance policy, which policy is delivered or issued for delivery in this State, shall include:

- (1) A description of the principal benefits and coverage provided in the policy;
- (2) A statement of the principal exclusions, reductions, and limitations contained in the policy; and
- (3) A statement that the group master policy determines governing contractual provisions.

(j) No policy or certificate may be advertised, marketed, or offered as long-term care or nursing home insurance unless it complies with the provisions of this Article.

"§ 58-546. *Facilities, services, and conditions defined.*--(a) Whenever long-term care insurance provides coverage for the facilities, services, or physical or mental conditions listed below, unless otherwise defined in the policy and certificate, and approved by the Commissioner, such facilities, services, or conditions are defined as follows:

- (1) 'Adult day care program' shall be defined in accordance with the provisions of G.S. 131D-6(b).
- (2) 'Chore' services include the performance of tasks incidental to activities of daily living that do not require the services of a trained homemaker or other specialist. Such services are provided to enable individuals to remain in their own homes and may include such services as: assistance in meeting basic care needs such as meal preparation; shopping for food and other necessities; running necessary errands; providing transportation to essential service facilities; care and cleaning of the house, grounds, clothing, and linens.
- (3) 'Combination home' shall be defined in accordance with the terms of G.S. 131E-101(1).
- (4) 'Domiciliary home' shall be defined in accordance with the terms of G.S. 131D-2(a)(3).
- (5) 'Family care home' shall be defined in accordance with the terms of G.S. 131D-2(a)(5).
- (6) 'Group home for developmentally disabled adults' shall be defined in accordance with the terms of G.S. 131D-2(a)(6).
- (7) 'Home for the aged and disabled' shall be defined in accordance with the terms of G.S. 131D2-(a)(7).
- (8) 'Home health services' shall be defined in accordance with the terms of G.S. 131E-136(3).
- (9) 'Homemaker services' means supportive services provided by qualified para-professionals who are trained, equipped, assigned, and supervised by professionals within the agency

to help maintain, strengthen, and safeguard the care of the elderly in their own homes. These standards must, at a minimum, meet standards established by the North Carolina Division of Social Services and may include: Providing assistance in management of household budgets; planning nutritious meals; purchasing and preparing foods; housekeeping duties; consumer education; and basic personal and health care.

- (10) 'Hospice' shall be defined in accordance with the terms of G.S. 131E-176(13a).
- (11) 'Intermediate care facility' shall be defined in accordance with the terms of G.S. 131E-176(14).
- (12) 'Nursing home' shall be defined in accordance with the terms of G.S. 131E-101(6).
- (13) 'Respite care, institutional' means provision of temporary support to the primary caregiver of the aged, disabled, or handicapped individual by taking over the tasks of that person for a limited period of time. The insured receives care for the respite period in an institutional setting, such as a nursing home, family care home, rest home, or other appropriate setting.
- (14) 'Respite care, non-institutional' means provision of temporary support to the primary caregiver of the aged, disabled, or handicapped individual by taking over the tasks of that person for a limited period of time in the home of the insured or other appropriate community location.
- (15) 'Skilled Nursing Facility' shall be defined in accordance with the terms of G.S. 131E-176(23).

(b) Whenever long-term care insurance provides coverage for organic brain disorder syndrome, progressive dementing illness, or primary degenerative dementia, such phrases shall be interpreted to include Alzheimer's Disease. Clinical diagnosis of 'organic brain disorder syndrome', 'progressive dementing illness', and 'primary degenerative dementia' must be accepted as evidence that such conditions exist in an insured when a pathological diagnosis cannot be made; provided that such medical evidence substantially documents the diagnosis of the condition and the insured received treatment for such condition."

Sec. 2. This act shall become effective September 1, 1987.

In the General Assembly read three times and ratified this the 10th day of June, 1987.

AN ACT TO MAKE A TECHNICAL AND CLARIFYING CHANGE
TO THE BANK HOLDING COMPANY ACT OF 1984.

The General Assembly of North Carolina enacts:

Section 1. G.S. 53-229 reads as rewritten:

"§ 53-229. *Acquisition and control of certain nonbank banking institutions.*--Notwithstanding any other provision of this Article or any other provision of the General Statutes of this State, no bank holding company or any other company may acquire or control any banking institution that:

(1) Has offices located in this State; and

(2) Is not a bank as defined in G.S. 53-226(1) of this Article.

For purposes of this section, 'company' means any corporation, partnership, business trust, association, or similar organization, or any other trust unless by its terms it must terminate within 25 years or not later than 21 years and 10 months after the death of individuals living on the effective date of the trust, and 'banking institution' means any institution organized under Article 2 of Chapter 53 (G.S. 53-2, et seq.) or Article 11 of Chapter 53 (G.S. 53-136, et seq.) of the General Statutes of this State or under Chapter 2 of Title 12 of the United States Code (12 U.S.C. § 21, et seq.). Provided, the provisions of G.S. 53-229 shall not apply to applications by any company which is chartered by the Congress of the United States and which application is pending before the Commissioner on July 7, 1984; and provided further the provisions of G.S. 53-229 shall not apply to the acquisition or control by a bank holding company or any other company of a banking institution engaged in doing a trust and fiduciary business that does not receive, solicit, or accept money or its equivalent on deposit as a business if such acquisition or control occurs prior to November 1, 1987."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 10th day of June, 1987.

AN ACT TO AMEND CHAPTER 20 OF THE GENERAL
STATUTES TO MAKE PASSENGER CAPACITY OF BUSES
CONSISTENT WITH REGULATION BY THE UTILITIES
COMMISSION UNDER PROVISIONS OF CHAPTER 62 OF
THE GENERAL STATUTES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-87(2) is amended by deleting the words "nine-passenger" and substituting the words "fifteen-passenger" each time they appear.

Sec. 2. G.S. 20-87(5) is amended by deleting the words "nine passengers" and substituting the words "fifteen passengers" each time they appear.

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 10th day of June, 1987.

H.B. 617

CHAPTER 334

AN ACT TO PERMIT CASWELL COUNTY TO COLLECT A MOTOR VEHICLE TAX OF NOT MORE THAN FIFTEEN DOLLARS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-97(a) reads as rewritten:

"(a) All taxes levied under the provisions of this Article are intended as compensatory taxes for the use and privileges of the public highways of this State, and shall be paid by the Commissioner to the State Treasurer, to be credited by him to the State Highway Fund; and no county or municipality shall levy any license or privilege tax upon any motor vehicle licensed by the State of North Carolina, except that cities and towns other than the City of Durham may levy not more than ~~five dollars (\$5.00)~~ fifteen dollars (\$15.00) per year upon any vehicle resident therein, and except that the City of Durham may levy not more than one dollar (\$1.00) per year upon any vehicle resident therein. Provided, further, that cities and towns may levy, in addition to the amounts hereinabove provided for, a sum not to exceed fifteen dollars (\$15.00) per year upon each vehicle operated in such city or town as a taxicab."

Sec. 2. This act applies to Caswell County only.

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 10th day of June, 1987.

H.B. 771

CHAPTER 335

AN ACT TO PROVIDE IMMUNITY TO MEMBERS OF THE NORTH CAROLINA AGRICULTURAL FINANCE AUTHORITY AND TO CLARIFY THE RULE-MAKING PROCEDURES APPLICABLE TO VARIOUS AGENCIES.

The General Assembly of North Carolina enacts:

Section 1. Chapter 122D of the General Statutes is amended by adding a new section to read:

"§ 122D-23. *Immunity.*--There shall be no liability on the part of and no cause of action of any nature may arise against the members of the Authority for any acts or omission to act by them in the performance of their powers and duties under this Chapter. The immunity established by this section shall not extend to willful neglect or malfeasance that would otherwise be actionable. The immunity established by this section further shall not extend to any act or omission occurring or arising out of the operation of a motor vehicle. The immunity established herein is waived to the extent of any indemnification by insurance for the liability of the members of the authority for which this act otherwise provides immunity."

Sec. 2. G.S. 150B-1(d), as amended by Chapter 112 of the 1987 Session Laws, is further amended by deleting the phrase "the North Carolina Agricultural Finance Authority until March 1, 1988,".

Sec. 3. Notwithstanding G.S. 150B-13, the North Carolina Agricultural Finance Authority may, until six months from the effective date of this act, adopt temporary rules to carry out the purposes of Chapter 122D of the General Statutes without prior notice or hearing or upon any abbreviated notice or hearing the Authority finds practicable. The Authority shall begin normal rule-making procedures on permanent rules in accordance with Article 2 of Chapter 150B at the same time it adopts a temporary rule. Temporary rules adopted under this section shall be published by the Director of the Office of Administrative Hearings in the *North Carolina Register* and shall be effective for a period of not longer than 180 days.

Sec. 4. Rules adopted by the Capital Building Authority that were in effect on the date the functions of the Authority were transferred to the State Building Commission by the enactment of Chapter 71 of the 1987 Session Laws apply to the State Building Commission until amended or repealed by the Commission.

Sec. 5. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 10th day of June, 1987.

H.B. 989

CHAPTER 336

AN ACT AUTHORIZING THE ISSUANCE OF REVENUE BONDS
TO FINANCE PROJECTS ON THE CENTENNIAL CAMPUS OF
NORTH CAROLINA STATE UNIVERSITY AT RALEIGH.

The General Assembly of North Carolina enacts:

Section 1. Chapter 116 of the General Statutes is amended by the addition of a new Article to read:

"Article 21B.

"Centennial Campus Financing Act.

"§ 116-198.31. *Purpose of Article.*--The purpose of this Article is to authorize the Board of Governors of The University of North Carolina to issue revenue bonds, payable from any leases, rentals, charges, fees, and other revenues but with no pledge of taxes or the faith and credit of the State or any agency or political subdivision thereof, to pay the cost, in whole or part, of buildings, structures, or other facilities for the Centennial Campus, located at North Carolina State University at Raleigh.

"§ 116-198.32. *Credit and taxing power of State not pledged; statement on face of bonds.*--Revenue bonds issued as in this Article provided shall not be deemed to constitute a debt or liability of the State or any political subdivision thereof or a pledge of the faith and credit of the State or of any such political subdivision, but shall be payable solely from the funds herein provided therefor from revenues. All such revenue bonds shall contain on the face thereof a statement to the effect that neither the State nor the Board (herein mentioned) shall be obligated to pay the same or the interest thereon except from revenues as herein defined and that neither the faith and credit nor the taxing power of the State or of any political subdivision or instrumentality thereof is pledged to the payment of the principal of or the interest on such bonds. The issuance of revenue bonds hereunder shall not directly or indirectly or contingently obligate the State or any political subdivision thereof to levy or to pledge any taxes whatsoever therefor.

"§ 116-198.33. *Definitions.*--As used in this Article, the following words and terms shall have the following meanings, unless the context shall indicate another or different meaning or intent:

(1) The word 'Board' shall mean the Board of Governors of The University of North Carolina.

(2) The word 'cost' as applied to any project, shall include the cost of acquisition or construction; the cost of acquisition of all property, both real and personal, or interests therein; the cost of demolishing, removing, or relocating any buildings or structures on land so acquired, including the cost of acquiring any lands to which such buildings or structures may be removed or relocated; the cost of all labor, materials, equipment and furnishings, financing charges, interest prior to and during construction and, if deemed advisable by

the Board, for a period not exceeding one year after completion of such construction; provisions for working capital, reserves for debt service and for extensions, enlargements, additions, and improvements; cost of engineering, financial, and legal services, plans, specifications, studies, surveys, and estimates of cost and of revenues; administrative expenses; expenses necessary or incident to determining the feasibility or practicability of constructing the project; and such other expenses as may be necessary or incident to acquisition or construction with respect to the project or to the placing of the project in operation. Any obligation or expense incurred by the Board prior to the issuance of bonds under the provisions of this Article in connection with any of the foregoing items of cost may be regarded as a part of such cost.

(3) The word 'Institution' shall mean North Carolina State University at Raleigh.

(4) The term 'Centennial Campus' shall mean that real property and appurtenant facilities designated by the Board of Governors as part of the Centennial Campus of the Institution.

(5) The term 'existing facilities' shall mean buildings and facilities, then existing, any part of the revenues of which are pledged under the provisions of any resolution authorizing the issuance of revenue bonds hereunder to the payment of such bonds.

(6) The word 'project' shall mean and shall include any one or more buildings, structures, administration buildings, libraries, research or instructional facilities, housing maintenance, storage, or utility facilities, and any facilities related thereto or required or useful for conducting of research or the operation of the Centennial Campus, including roads, water, sewer, power, gas, greenways, parking, or any other support facilities essential or convenient for the orderly conduct of the Centennial Campus.

(7) The word 'revenues' shall mean all or any part of the rents, leases, charges, fees, and other income revenues derived from or in connection with any project or projects and existing facilities.

"§ 116-198.34. *General powers of Board of Governors.*--The Board is authorized, subject to the requirements of this Article:

(1) To determine the location and character of any project or projects, and to acquire, construct, and provide the same, and to maintain, repair, and operate, and to enter into contracts for the management, lease, use, or operation of all or any portion of any project or projects and any existing facilities;

(2) To issue revenue bonds as hereinafter provided to pay all or any part of the cost of any project or projects, and to fund or refund the same;

(3) To fix and revise from time to time and charge and collect rates, fees, rents, and charges for the use of, and for the services furnished by, all or any portion of any project or projects;

(4) To establish and enforce, and to agree through any resolution or trust agreement authorizing or securing bonds under this Article to make and enforce, rules and regulations for the use of and services rendered by any project or projects and any existing facilities, to provide for the maximum use of any project or projects and any existing facilities;

(5) To acquire, hold, lease, and dispose of real and personal property in the exercise of its powers and the performance of its duties hereunder and to lease all or any part of any project or projects and any existing facilities for such period or periods of years, not exceeding 40 years, upon such terms and conditions as the Board determines, subject to the provisions of G.S. 143-341;

(6) To employ consulting engineers, architects, attorneys, accountants, construction and financial experts, superintendents, managers, and such other employees and agents as may be necessary in its judgment in connection with any project or projects and existing facilities, and to fix their compensation;

(7) To make and enter into all contracts and agreements necessary or incidental to the performance of its duties and the execution of its powers under this Article;

(8) To receive and accept from any federal, State, or other public agency and any private agency, person or other entity donations, loans, grants, aid, or contributions of any money, property, labor, or other things of value for any project or projects, and to agree to apply and use the same in accordance with the terms and conditions under which the same are provided; and

(9) To do all acts and things necessary or convenient to carry out the powers granted by this Article.

" § 116-198.35. *Issuance of bonds and bond anticipation notes.*--The Board is hereby authorized to issue, subject to the approval of the Director of the Budget, at one time or from time to time, revenue bonds of the Board for the purpose of paying all or any part of the cost of acquiring, constructing, or providing any project or projects on the Centennial Campus. The bonds of each issue shall be dated, shall mature at such time or times not exceeding 40 years from their date or dates, shall bear interest at such rate or rates as may be determined by the Board, and may be redeemable before maturity, at the option of the Board, at such price or prices and under such terms and conditions as may be fixed by the Board prior to the issuance of the

bonds. The Board shall determine the form and manner of execution of the bonds, including any interest coupons to be attached thereto, and shall fix the denomination or denominations of the bonds and the place or places of payment of principal and interest, which may be at any bank or trust company within or without the State. In case any officer whose signature or a facsimile of whose signature shall appear on any bonds or coupons shall cease to be such officer before the delivery of such bonds, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes the same as if he had remained in office until such delivery. Notwithstanding any of the other provisions of this Article or any recitals in any bonds issued under the provisions of this Article, all such bonds shall be deemed to be negotiable instruments under the laws of this State, subject only to the provisions for registration in any resolution authorizing the issuance of such bonds or any trust agreement securing the same. The bonds may be issued in coupon or registered form or both or as book-entry bonds, as the Board may determine, and provision may be made for the registration of any coupon bonds as to principal alone and also as to both principal and interest, and for the reconversion into coupon bonds of any bonds registered as to both principal and interest. The Board may sell such bonds in such manner, at public or private sale, and for such price, as it may determine to be for the best interests of the Board.

The proceeds of the bonds of each issue shall be used solely for the purpose for which such bonds shall have been authorized and shall be disbursed in such manner and under such restrictions, if any, as the Board may provide in the resolution authorizing the issuance of such bonds or in the trust agreement hereinafter mentioned securing the same. Unless otherwise provided in the authorizing resolution or in the trust agreement securing such bonds, if the proceeds of such bonds, by error of estimates or otherwise, shall be less than such cost, additional bonds may in like manner be issued to provide the amount of such deficit and shall be deemed to be of the same issue and shall be entitled to payment from the same fund without preference or priority of the bonds first issued for the same purpose.

The resolution providing for the issuance of revenue bonds, and any trust agreement securing such bonds, may also contain such limitations upon the issuance of additional revenue bonds as the Board may deem proper, and such additional bonds shall be issued under such restrictions and limitations as may be prescribed by such resolution or trust agreement.

Prior to the preparation of definitive bonds, the Board may, under like restrictions, issue interim receipts or temporary bonds, with or without coupons, exchangeable for definitive bonds when such bonds shall have been executed and are available for delivery. The Board may also provide for the replacement of any bonds which shall become mutilated or be destroyed or lost.

Except as herein otherwise provided, bonds may be issued under this Article and other powers vested in the Board under this Article may be exercised by the Board without obtaining the consent of any department, division, commission, board, bureau, or agency of the State and without any other proceedings or the happening of any other conditions or things than those proceedings, conditions, or things which are specifically required by this Article.

The Board may enter into or negotiate a note with an acceptable bank or trust company in lieu of issuing bonds for the financing of projects covered under this section. The terms and conditions of any note of this nature shall be in accordance with the terms and conditions surrounding issuance of bonds.

The Board is hereby authorized to issue, subject to the approval of the Director of the Budget, at one time or from time to time, revenue bond anticipation notes of the Board in anticipation of the issuance of bonds authorized pursuant to the provisions of this Article. The principal of and the interest on such notes shall be payable solely from the proceeds of bonds or renewal notes, or, in the event bond or renewal note proceeds are not available, any available revenues of the project or projects for which such bonds shall have been authorized. The notes of each issue shall be dated, shall mature at such time or times not exceeding two years from their date or dates, shall bear interest at such rate or rates as may be determined by the Board, and may be redeemable before maturity, at the option of the Board, at such price or prices and under such terms and conditions as may be fixed by the Board prior to the issuance of the notes. The Board shall determine the form and the manner of execution of the notes, including any interest coupons to be attached thereto, and shall fix the denomination or denominations of the notes and the place or places of payment of principal and interest, which may be at any bank or trust company within or without the State. In case any officer whose signature or a facsimile of whose signature shall appear on any notes or coupons shall cease to be such officer before the delivery of such notes, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes the same as if he had remained in office until such delivery. Notwithstanding any of the other provisions of this Article or any recitals in any notes issued under the provisions of this Article, all such notes shall be deemed to be negotiable

instruments under the laws of this State, subject only to the provisions for registration in any resolution authorizing the issuance of such notes or any trust agreement securing the bonds in anticipation of which such notes are being issued. The notes may be issued in coupon or registered form or both or as book entry notes, as the Board may determine, and provision may be made for the registration of any coupon notes as to principal alone and also as to both principal and interest, and for the reconversion into coupon notes of any notes registered as to both principal and interest. The Board may sell such notes in such manner, at public or private sale, and for such price, as it may determine to be for the best interests of the Board.

The proceeds of the notes of each issue shall be used solely for the purpose for which the bonds in anticipation of which such notes are being issued shall have been authorized, and such note proceeds shall be disbursed in such manner and under such restrictions, if any, as the Board may provide in the resolution authorizing the issuance of such notes or bonds or in the trust agreement securing such bonds.

The resolution providing for the issuance of notes, and any trust agreement securing the bonds in anticipation of which such notes are being authorized, may also contain such limitations upon the issuance of additional notes as the Board may deem proper, and such additional notes shall be issued under such restrictions and limitations as may be prescribed by such resolution or trust agreement. The Board may also provide for the replacement of any notes which shall become mutilated or be destroyed or lost.

Except as herein otherwise provided, notes may be issued under this Article and other powers vested in the Board under this Article may be exercised by the Board without obtaining the consent of any department, division, commission, board, bureau, or agency of the State and without any other proceedings or the happening of any other conditions or things than those proceedings, conditions, or things which are specifically required by this Article.

Unless the context shall otherwise indicate, the word 'bonds' wherever used in this Article, shall be deemed and construed to include the words 'bond anticipation notes'.

" § 116-198.36. *Proceeds of bonds are deemed trust funds.*--In the discretion of the Board and subject to the approval of the Director of the Budget, any revenue bonds issued under this Article may be secured by a trust agreement by and between the Board and a corporate trustee (or trustees) which may be any trust company or bank having the powers of a trust company within or without the

State. Such trust agreement or the resolution providing for the issuance of such bonds may pledge or assign the revenues to be received but shall not convey or mortgage any project or projects or any existing facilities or any part thereof. Such trust agreement or resolution providing for the issuance of such bonds may contain such provisions for protecting and enforcing the rights and remedies of the holders of such bonds as may be reasonable and proper and not in violation of law, including covenants setting forth the duties of the Board in relation to the acquisition, construction, or provision of any project or projects, the maintenance, repair, operation, and insurance of any project or projects and any existing facilities, student fees and admission fees and charges, and other fees, rents, and charges to be fixed and collected, and the custody, safeguarding, and application of all moneys. It shall be lawful for any bank or trust company incorporated under the laws of the State which may act as depository of the proceeds of bonds or revenues to furnish such indemnifying bonds or to pledge such securities as may be required by the Board. Any such trust agreement or resolution may set forth the rights and remedies of the holders of the bonds and the rights, remedies, and immunities of the trustee or trustees, if any, and may restrict the individual right of action by such holders. In addition to the foregoing, any such trust agreement or resolution may contain such other provisions as the Board may deem reasonable and proper for the security of such holders. All expenses incurred in carrying out the provisions of such trust agreement or resolution may be treated as a part of the cost of the project or projects for which such bonds are issued or as an expense of operation of such project or projects, as the case may be.

The proceeds of all bonds issued and all revenues and other moneys received pursuant to the authority of this Article shall be deemed to be trust funds, to be held and applied solely as provided in this Article. The Board may provide for the payment of the proceeds of the sale of the bonds and the revenues, or part thereof, to such officer, board, or depository as it may designate for the custody thereof, and for the method of disbursement thereof, with such safeguards and restrictions as it may determine. Any officer with whom, or any bank, trust company, or fiscal agent with which, such moneys shall be deposited shall act as trustee of such moneys and shall hold and apply the same for the purposes hereof, subject to such requirements as are provided in this Article and in the resolution or trust agreement authorizing or securing such bonds.

Notwithstanding the provisions of any other law, the Board may carry insurance on any project or projects and any existing facilities in such amounts and covering such risks as it may deem advisable.

Any holder of bonds issued under this Article or of any of the coupons appertaining thereto, and the trustee or trustees under any trust agreement, except to the extent the rights herein given may be restricted by such trust agreement or the resolution authorizing the issuance of such bonds, may, either at law or in equity, by suit, action, mandamus, or other proceedings, protect and enforce any and all rights under the laws of the State or granted hereunder or, under such trust agreement or resolution, and may enforce and compel the performance of all duties required by this Article or by such trust agreement or resolution to be performed by the Board or by any officer thereof, including the fixing, charging, and collecting of fees, rents, and charges.

"§ 116-198.37. *Fixing fees, rents, and charges; sinking fund.*--For the purpose of aiding in the acquisition, construction, or provision of any project and the maintenance, repair, and operation of any project or any existing facilities, the Board is authorized to fix, revise from time to time, charge, and collect such fee or fees for such privileges and services and in such amount or amounts as the Board shall determine, and to fix, revise from time to time, charge, and collect other fees, rents, and charges for the use of and for the services furnished or to be furnished by any project or projects and any existing facilities, or any portion thereof, and to contract with any person, partnership, association, or corporation for the lease, use, occupancy, or operation of any project or projects and any existing facilities, or any part thereof, and to fix the terms, conditions, fees, rents, and charges for any such lease, use, occupancy, or operation. So long as bonds issued hereunder and payable therefrom are outstanding, such fees, rents, and charges shall be so fixed and adjusted, with relation to other revenues available therefor, as to provide funds pursuant to the requirements of the resolution or trust agreement authorizing or securing such bonds at least sufficient with such other revenues, if any, (i) to pay the cost of maintaining, repairing, and operating any project or projects and any existing facilities any part of the revenues of which are pledged to the payment of the bonds issued for such project or projects, (ii) to pay the principal of and the interest on such bonds as the same shall become due and payable, and (iii) to create and maintain reserves for such purposes. Any surplus funds remaining after application to the purposes mentioned in (i), (ii), and (iii), above, shall be held in trust and applied by the Board to the development of the Centennial Campus. Such fees, rents, and charges shall not be subject to

supervision or regulation by any other commission, board, bureau, or agency of the State. A sufficient amount of the revenues, except such part thereof as may be necessary to pay such cost of maintenance, repair, and operation and to provide such reserves therefor and for renewals, replacements, extensions, enlargements, and improvements as may be provided for in the resolution authorizing the issuance of such bonds or in the trust agreement securing the same, shall be set aside at such regular intervals as may be provided in such resolution or such trust agreement in a sinking fund which is hereby pledged to and charged with the payment of the principal of and the interest on such bonds as the same shall become due and the redemption price or the purchase price of bonds retired by call or purchase as therein provided. Such pledge shall be valid and binding from the time when the pledge is made; the fees, rents, and charges and other revenues or other moneys so pledged and thereafter received by the Board shall immediately be subject to the lien of such pledge without any physical delivery thereof or further act; and the lien of any such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract, or otherwise against the Board, irrespective of whether such parties have notice thereof. Neither the resolution nor any trust agreement by which a pledge is created need be filed or recorded except in the records of the Board. The use and disposition of moneys to the credit of such sinking fund shall be subject to the provisions of the resolution authorizing the issuance of such bonds or of the trust agreement securing the same.

"§ 116-198.38. *Refunding bonds.*--The Board is hereby authorized, subject to the approval of the Director of the Budget, to issue from time to time revenue refunding bonds for the purpose of refunding any revenue bonds or revenue refunding bonds issued by the Board under this Article, including the payment of any redemption premium thereon and any interest accrued or to accrue to the date of redemption of such bonds. The Board is further authorized, subject to the approval of the Director of the Budget, to issue from time to time revenue refunding bonds for the combined purpose of (i) refunding any such revenue bonds or revenue refunding bonds issued by the Board under this Article, including the payment of any redemption premium thereon and any interest accrued or to accrue to the date of redemption of such bonds, and (ii) paying all or any part of the cost of acquiring or constructing any additional project or projects.

The issuance of such refunding bonds, the maturities and other details thereof, the rights and remedies of the holders thereof, and the rights, powers, privileges, duties, and obligations of the Board with

respect to the same, shall be governed by the foregoing provisions of this Article insofar as the same may be applicable.

" § 116-198.39. *Bonds are exempt from taxation.*--Any bonds issued under this Article, including any of such bonds constituting a part of the surplus of any bank, trust company, or other corporation, and the transfer of and the income from any such bonds (including any profit made on the sale thereof and all principal, interest, and redemption premiums, if any) shall at all times be exempt from all taxes or assessment, direct or indirect, general or special, whether imposed for the purpose of general revenue or otherwise, which are levied or assessed by the State or by any county, political subdivision, agency, or other instrumentality of the State. Bonds issued by the Board under the provisions of this Article are hereby made securities in which all public officers and public bodies of the State and its political subdivisions, all insurance companies, trust companies, banking associations, investment companies, executors, administrators, trustees, and other fiduciaries may properly and legally invest funds, including capital in their control or belonging to them. Such bonds are hereby made securities which may properly and legally be deposited with and received by any State or municipal officer or any agency or political subdivision of the State for any purpose for which the deposit of bonds or obligations of the State is now or may hereafter be authorized by law.

" § 116-198.40. *Article provides additional and alternative method of financing; not exclusive.*--This Article shall be deemed to provide an additional and alternative method for the doing of the things authorized hereby and shall be regarded as supplemental and additional to powers conferred by other laws, and shall not be regarded as in derogation of or as repealing any powers now existing under any other law, either general, special, or local; provided, however, that the issuance of revenue bonds or revenue refunding bonds under the provisions of this Article need not comply with the requirements of any other law applicable to the issuance of bonds."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 10th day of June, 1987.

H.B. 1019

CHAPTER 337

AN ACT TO RAISE THE SPEED LIMIT FOR ACTIVITY BUSES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-218(b)(1) is amended by deleting the number "45" and substituting the number "55".

Sec. 2. G.S. 20-218.2 is amended by deleting the number "45" and substituting the number "55".

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 10th day of June, 1987.

S.B. 8

CHAPTER 338

AN ACT TO MERGE THE TOWNS OF HAZELWOOD AND WAYNESVILLE, SUBJECT TO A REFERENDUM.

The General Assembly of North Carolina enacts:

Section 1. (a) All property, real and personal and mixed, including accounts receivable, belonging to the Town of Hazelwood shall vest in, belong to, and be the property of the Town of Waynesville. The governing body of the Town of Hazelwood is hereby authorized and directed to take such actions and to execute such documents as will carry into effect the provisions and the intent of this section.

(b) All judgments, liens, rights of liens, and causes of action of any nature in favor of the Town of Hazelwood shall vest in and remain and inure to the benefit of the Town of Waynesville.

(c) All taxes, assessments, water or sewer charges, and any other charges or fees, owing to the Town of Hazelwood shall be owed to and collected by the Town of Waynesville.

(d) All actions, suits, and proceedings pending against, or having been instituted by the Town of Hazelwood shall not be abated by this act or by the merger herein provided for, but all such actions, suits, and proceedings shall be continued and completed in the same manner as if merger had not occurred, and the Town of Waynesville shall be a party to all such actions, suits, and proceedings in the place and stead of the Town of Hazelwood and shall pay or cause to be paid any judgments rendered against the Town of Hazelwood in any such actions, suits, or proceedings. No new process need be served in any such action, suit, or proceeding.

(e) All obligations of the Town of Hazelwood, including outstanding indebtedness, shall be assumed by the Town of Waynesville, and all such obligations and outstanding indebtedness are hereby constituted obligations and indebtedness of the Town of Waynesville, and the full faith and credit of the Town of Waynesville

shall be deemed to be pledged for the punctual payment of the principal of and interest on all general obligation bonds and bond anticipation notes of the Town of Hazelwood, and all the taxable property within the Town of Waynesville, as well as that formerly located within the Town of Hazelwood shall be and remain subject to taxation for such payment.

(f) All ordinances of the Town of Hazelwood shall continue in full force and effect within the area to which they apply on the effective date of this section as ordinances of the Town of Waynesville until repealed or amended by the governing body of the Town of Waynesville.

(g) All franchises heretofore granted by the Town of Hazelwood, which are still in force shall continue as valid franchises of the Town of Waynesville for the purposes granted within the area formerly comprising the Town of Hazelwood, but shall not hereby be constituted valid franchises for any other portion of the corporate limits of the Town of Waynesville.

(h) The Town of Waynesville shall assume responsibility for all current and future liabilities of the Town of Hazelwood for unemployment insurance benefit charges under G.S. 96-9(f)(1).

Sec. 2. Chapter 609, Session Laws of 1967, is amended by adding a new section to read:

"Sec. 1.1. Notwithstanding any other provision of law, a town liquor store may not be operated in the part of the Town of Waynesville that on the date of merger with the Town of Hazelwood was within the corporate limits of the Town of Hazelwood."

Sec. 3. Section 1.3 of the Charter of the Town of Waynesville, being Chapter 431, Session Laws of 1981, is amended by adding the following new language immediately after the first sentence: "The corporate limits of the Town of Waynesville also include all areas within the corporate limits of the Town of Hazelwood on the date the Town of Hazelwood was merged into the Town of Waynesville."

Sec. 4. The Town of Hazelwood is merged into the Town of Waynesville.

Sec. 5. All property that had a tax situs in the Town of Hazelwood on January 1, 1988, shall be considered to have a tax situs in the Town of Waynesville for the appropriate fiscal year and any property properly listed for taxation in the Town of Hazelwood is properly listed for taxation in the Town of Waynesville.

Sec. 6. Sections 1, 2, and 7 of Chapter 225, Session Laws of 1977, are repealed.

Sec. 7. The qualified voters of the Towns of Hazelwood or Waynesville may petition the mayor and board of aldermen of their town for the call of an election on the question of merger of said towns. A petition in either town shall be signed by at least twenty

percent (20%) of the qualified voters therein; shall be presented to the town clerk no later than 30 days after the date of ratification of this act; shall be certified by the town clerk as to the sufficiency thereof; and if the clerk finds that the petition is sufficient, the clerk shall notify the Haywood County Board of Elections.

Sec. 8. Upon receipt of such notice, the Board of Elections shall call elections in both the Towns of Hazelwood and Waynesville, to be held on August 25, 1987, and shall notify the mayor and board of aldermen of both towns that the election has been called.

All elections under this section shall be conducted pursuant to Chapter 163 of the General Statutes, except that notwithstanding G.S. 163-33(8), notice shall be given at least 30 days prior to the election and the advertisement shall be made twice, once prior to 30 days before the election, and once between 30 and 20 days prior to the election, and except that if absentee voting is allowed in either town under G.S. 163-302, notwithstanding subsection (b) of that section the earliest date absentee ballots must be available is 20 days prior to the election.

Sec. 9. The form of the ballot shall be substantially as follows:

"[] FOR merger of the Town of Hazelwood with the Town of Waynesville.

[] AGAINST merger of the Town of Hazelwood with the Town of Waynesville."

Sec. 10. The Board of Elections shall certify the results of any such election to each of said towns and the clerk of each town shall cause such certification to be recorded in the official minute book of the town.

Sec. 11. If a sufficient petition is not submitted under Section 7 of this act within 30 days of ratification of this act, this act shall have no further effect.

Sec. 12. (a) The Board of Elections shall certify the results of any such election to each of said towns and the mayor and board of aldermen of each town shall cause such certification to be recorded in the official minute book of the town.

(b) If a majority of the votes cast in each town are for consolidation, the proposition is carried. If the proposition is carried, then Sections 1 through 6 of this act shall become effective on July 1, 1988. If the proposition is carried, the Haywood County Board of Elections shall reopen filing for the offices of Mayor and Board of Aldermen of the Town of Waynesville for the regular 1987 election for a period of not less than seven days. During that period, filing

shall be open for any qualified voter of the Town of Hazelwood, and any candidate who has already filed may withdraw and receive a refund of the filing fee paid. If the proposition is carried, in the 1987 regular Town election, the voters of both the Towns of Hazelwood and Waynesville shall vote in the election for the Mayor of Waynesville and the members of the Board of Aldermen of the Town of Waynesville, and no election shall be held in 1987 for the Mayor of the Town of Hazelwood and the Board of Aldermen of the Town of Hazelwood, and any person who has filed for any Hazelwood town office for the 1987 regular election shall have the filing fee refunded.

(c) If the proposition is carried, then at convening of the 1987 organizational meeting of the Board of Aldermen of the Town of Waynesville after the regular 1987 election, the terms of office of the Mayor of the Town of Hazelwood and members of the Board of Aldermen of the Town of Hazelwood expire, and they shall not hold over. During the period beginning with the convening of that meeting and ending June 30, 1988, the Mayor of Waynesville shall be ex officio Mayor of the Town of Hazelwood, and the members of the Board of Aldermen of the Town of Waynesville shall be ex officio members of the Board of Aldermen of the Town of Hazelwood, notwithstanding the number of members of that Board provided in the Charter of the Town of Hazelwood.

(d) If the proposition is not carried, Sections 1 through 6 of this act do not become effective.

Sec. 13. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 11th day of June, 1987.

H.B. 896

CHAPTER 339

AN ACT TO PROVIDE THAT THE CITY OF CLINTON NEED NOT MAIL ZONING NOTICES TO AREAS NEWLY ANNEXED OR NEWLY ADDED TO ITS EXTRATERRITORIAL JURISDICTION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 160A-384 reads as rewritten:

" § 160A-384. *Method of procedure.*--The city council shall provide for the manner in which zoning regulations and restrictions and the boundaries of zoning districts shall be determined, established and enforced, and from time to time amended, supplemented or changed, in accordance with the provisions of this Article. The procedures adopted pursuant to this section shall provide that whenever there is a

zoning classification action involving a parcel of land, the owner of that parcel of land as shown on the county tax listing, and the owners of all parcels of land abutting that parcel of land as shown on the county tax listing, shall be mailed a notice of the proposed classification by first class mail at the last addresses listed for such owners on the county tax abstracts, provided that this sentence shall not apply in the case of initial zoning of areas newly annexed or newly included in the extraterritorial jurisdiction of the city. The person or persons mailing such notices shall certify to the city council that fact, and such certificate shall be deemed conclusive in the absence of fraud."

Sec. 2. This act applies to the City of Clinton only.

Sec. 3. This act is effective upon ratification, but expires June 30, 1988.

In the General Assembly read three times and ratified this the 11th day of June, 1987.

S.B. 184

CHAPTER 340

AN ACT TO DIRECT THE PUBLIC SCHOOLS TO REFER STUDENTS WHO DROP OUT OF THE PUBLIC SCHOOLS TO APPROPRIATE SERVICES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 115C-47 is amended by adding a new subdivision to read:

"(32) To refer all students who drop out of the public schools to appropriate services. Local boards of education shall refer all students who drop out of the public schools to appropriate services. When appropriate public school services such as extended day programs are available, the local boards shall refer the students to those services. When appropriate public school programs are not available or are not suitable for certain students, the local board shall refer the students to the community college system or to other appropriate services."

Sec. 2. This act is effective upon ratification and shall apply to all school years beginning with the 1987-88 school year.

In the General Assembly read three times and ratified this the 12th day of June, 1987.

S.B. 195

CHAPTER 341

AN ACT TO PROVIDE FOR ENFORCEMENT OF BUILDING AND OTHER CODES BY THE COUNTY OF CRAVEN AS TO PROPERTY OF CRAVEN COMMUNITY COLLEGE RATHER THAN BY CITIES IN THAT COUNTY.

The General Assembly of North Carolina enacts:

Section 1. Craven County shall have exclusive jurisdiction as against any city as defined by G.S. 160A-1 for the administration and enforcement of all laws, statutes, code requirements, and all other applicable regulations adopted by the State or any city respecting building, construction, fire, and safety codes as the same relate to or are legally applicable to the Board of Trustees of Craven Community College.

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 12th day of June, 1987.

S.B. 234

CHAPTER 342

AN ACT TO AMEND THE TOWN OF RENNERT'S CHARTER TO PROVIDE FOR THE MAYOR TO HAVE THE SAME RIGHT TO VOTE AS MEMBERS OF THE BOARD OF COMMISSIONERS.

The General Assembly of North Carolina enacts:

Section 1. Section 3 of the Charter of the Town of Rennert, as found in Chapter 300, Session Laws of 1977, is repealed and the following new sections added to the Charter:

"Section 3.1. Composition of Board of Commissioners. The Board of Commissioners shall consist of a Mayor and five members to be elected by the qualified voters of the Town voting at large.

Section 3.2. Mayor and Mayor Pro Tempore. The Mayor shall be elected by the qualified voters of the Town and his term shall be for two years. In case of a vacancy in the office of the Mayor, the remaining members shall elect his successor for the unexpired term. The duties of the Mayor shall be to preside at all meetings of the Town Board of Commissioners; to be the official head of the Town for the service of process, for ceremonial purposes, and shall be so recognized by the Governor of the State in connection with the military law; shall have power to administer oaths and take affidavits; shall sign all written contracts entered into by the Commission on behalf of the Town and all other contracts and instruments executed

by the Town, which by law required the Mayor's signature. The Mayor shall have the same power as other members of the Board of Commissioners to vote on any question, or upon the appointment of officers, but he shall have no power to veto. The Mayor shall exercise such powers and perform such duties as are or may be conferred upon him by the general laws of North Carolina, by this Charter, and by the Ordinances of the Town. At the January Board of Commissioners meeting each year, the Commission shall elect one of its members to be Mayor Pro Tempore, to preside in absence of or during the disability of the Mayor until a Mayor is elected by the Board of Commissioners pursuant to G.S. 160A-63 and this section.

Section 3.3. Terms and vacancies of Board of Commissioners. (a) The members of the Town Board of Commissioners shall serve for staggered terms of four years in accordance with Section 4 of this Article. (b) Vacancies shall be filled as provided in G.S. 160A-63."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 12th day of June, 1987.

S.B. 246

CHAPTER 343

AN ACT TO REINSTATE THE 1976 PROFESSIONAL LIABILITY REPORTING ACT AND TO AUTHORIZE THE COMMISSIONER OF INSURANCE TO CONDUCT STUDIES OF MEDICAL MALPRACTICE CLAIMS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 58-21.1 is rewritten to read:

" § 58-21.1. *Annual statements by professional liability insurers; medical malpractice claim reports.*--(a) In addition to the financial statements required by G.S. 58-21, every insurer, self-insurer, and risk retention group that provides professional liability insurance in the State shall file with the Commissioner, on or before the first day of February in each year, in form and detail as the Commissioner prescribes, a statement showing the items set forth in subsection (b) of this section, as of the preceding 31st day of December. The annual statement shall not be reported or disclosed to the public in a manner or format which identifies or could reasonably be used to identify any individual health care provider, or medical center. The statement shall be signed and sworn to by the chief managing agent or officer of the insurer, self-insurer, or risk retention group, before the

Commissioner or some officer authorized by law to administer oaths. The Commissioner shall, in December of each year, furnish to each such person that provides professional liability insurance in the State forms for the annual statements. The Commissioner may, for good cause, authorize an extension of the report due date upon written application of any person required to file. An extension is not valid unless the Commissioner's authorization is in writing and signed by the Commissioner or one of his deputies.

(b) The statement required by subsection (a) of this section shall contain:

- (1) Number of claims pending at beginning of year;
- (2) Number of claims pending at end of year;
- (3) Number of claims paid;
- (4) Number of claims closed no payment;
- (5) Number and amounts of claims in court in which judgment paid:
 - a. Highest amount
 - b. Lowest amount
 - c. Average amount
 - d. Median amount;
- (6) Number and amounts of claims out of court in which settlement paid:
 - a. Highest amount
 - b. Lowest amount
 - c. Average amount
 - d. Median amount;
- (7) Average amount per claim set up in reserve;
- (8) Total premium collection;
- (9) Total expenses less reserve expenses; and
- (10) Total reserve expenses.

(c) Every insurer, self-insurer, and risk retention group that provides professional liability insurance to health care providers in this State shall file, within 90 days following the request of the Commissioner, a report containing information for the purpose of allowing the Commissioner to analyze claims. The report shall be in the form prescribed by the Commissioner. The form prescribed by the Commissioner shall be a form that permits the public inspection, examination, or copying of any information contained in the report: Provided, however, that any data or other characteristics that identify or could be used to identify the names or addresses of the claimants or the names or addresses of the individual health care provider or medical center against whom the claims are or have been asserted or any data that could be used to identify the dollar amounts involved in such claims shall be treated as privileged information and shall not be

made available to the public. The Commissioner shall analyze these reports and shall file statistical and other summaries based on these reports with the General Assembly as soon as practicable after receipt of the reports. The Commissioner shall assess a penalty against any person that willfully fails to file a report required by this subsection. Such penalty shall be one thousand dollars (\$1,000) for each day after the due date of the report that the person willfully fails to file: Provided, however, the penalty for an individual who self insures shall be two hundred dollars (\$200.00) for each day after the due date of the report that the person willfully fails to file: Provided, however, that upon the failure of a person to file the report as required by this subsection, the Commissioner shall send by certified mail, return receipt requested, a notice to that person informing him that he has 10 business days after receipt of the notice to either request an extension of time or file the report. The Commissioner may, for good cause, authorize an extension of the report due date upon written application of any person required to file. An extension is not valid unless the Commissioner's authorization is in writing and signed by the Commissioner or one of his deputies.

(d) Every person that self-insures against professional liability in this State shall provide the Commissioner with written notice of such self-insurance, which notice shall include the name and address of the person self-insuring. This notice shall be filed with the Commissioner each year for the purpose of apprising the Commissioner of the number and locations of persons that self-insure against professional liability."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 12th day of June, 1987.

S.B. 290

CHAPTER 344

AN ACT TO AMEND THE CHARTER OF THE CITY OF CHARLOTTE RELATING TO THE ESTABLISHMENT OF CONTRACT SPECIFICATION REQUIREMENTS.

The General Assembly of North Carolina enacts:

Section 1. Chapter IX, subchapter E, of the Charter of the City of Charlotte, being Chapter 713, Session Laws of 1965, is amended by adding a new section to read:

"Section 9.83. Contract Specification Requirements. The City Council may establish minimum minority and/or women's business enterprise participation (M/WBE) requirements and in that event shall

include such requirements in the specifications for City contracts. In addition, in construction and repair contracts under which subcontracts are customarily awarded by that primary contractor, the City Council is authorized to establish specifications requiring bidders to subcontract a certain designated percentage of the construction and repair work amount; provided, that nothing in the specifications or requirements developed shall be construed to require that the award of subcontracts be made to subcontractors who do not submit the lowest responsible sub-bid and do not meet the bonding requirements otherwise required by law. Notwithstanding the provisions of G.S. 143-129 and G.S. 143-131, the City Council may consider a bidder's compliance with specifications containing M/WBE or subcontracting requirements in its award of contracts, and may, in its discretion, refuse to award a contract to a bidder if it determines that the bidder has failed to make a good faith effort to comply with said requirements."

Sec. 2. All laws and clauses of laws in conflict with this act are repealed.

Sec. 3. This act shall apply to the City of Charlotte only.

Sec. 4. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 12th day of June, 1987.

S.B. 316

CHAPTER 345

AN ACT TO AMEND THE LICENSURE LAW FOR MENTAL
HEALTH, MENTAL RETARDATION, AND SUBSTANCE
ABUSE SERVICES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 122C-3(26) is deleted.

Sec. 2. G.S. 122C-22(b) is amended by rewriting the first sentence to read: "The Commission may adopt rules establishing a procedure whereby a licensable facility certified by a nationally recognized agency, such as the Joint Commission on Accreditation of Hospitals, may be deemed licensed under this Article by the Secretary."

Sec. 3. G.S. 122C-23(b) is rewritten to read: "Each license is issued to the person only for the premises named in the application and shall not be transferrable or assignable except with prior written approval of the Secretary."

Sec. 4. G.S. 122C-23(d) is amended by deleting the word "operator" and replacing it with the word "person".

Sec. 5. G.S. 122C-24(a) is rewritten as follows: "The Secretary may deny, suspend, amend, or revoke a license in any case in which the Secretary finds that there has been a substantial failure to comply with any provision of this Article or other applicable statutes or any applicable rule adopted pursuant to these statutes. Action under this section and appeals of those actions shall be in accordance with rules of the Commission and Chapter 150B of the General Statutes."

Sec. 6. This act shall become effective July 1, 1987.

In the General Assembly read three times and ratified this the 12th day of June, 1987.

S.B. 327

CHAPTER 346

AN ACT TO MAKE THE CHILD SUPPORT EXPEDITED
PROCESS CONFORM WITH FEDERAL AND STATE LAW.

The General Assembly of North Carolina enacts:

Section 1. G.S. 50-31(1) reads as rewritten:

"(1) 'Child support case' means the part of any civil or criminal action or proceeding, whether intrastate or interstate, that involves a claim for the establishment or enforcement of a child support obligation."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 12th day of June, 1987.

S.B. 396

CHAPTER 347

AN ACT TO NAME "MILK" AS THE STATE BEVERAGE OF
NORTH CAROLINA.

Whereas, milk is a primary and necessary food for the citizens of North Carolina; and

Whereas, experts in health and nutrition proclaim milk as "Nature's most nearly perfect food"; and

Whereas, research reveals that milk provides the best source of calcium, an essential element of our diets; and

Whereas, citizens of North Carolina, both young and old, consume over 143 million gallons of milk every year; and

Whereas, approximately 1,000 North Carolina dairy farmers produce over 179 million gallons of milk every year; and

Whereas, milk is used as the primary ingredient in many of the delicious dairy products including ice cream, ice milk, cheeses, sour cream, various and sundry epicurean delights enjoyed daily by the

citizens of North Carolina; and

Whereas, the delectable, pearly, passion of the palate contributes to the betterment of the life, health and enjoyment of all of the citizens of our great State; and

Whereas, the average North Carolina dairy farmer has an investment of four thousand eight hundred dollars (\$4,800) per cow and he is the constant 24-hour everyday housekeeper, dietician and doctor to the animals in order for them to produce the beautiful beverage of milk that contributes so much to the good life enjoyed by the citizens of North Carolina; Now, therefore,

The General Assembly of North Carolina enacts:

Section 1. Chapter 145 of the North Carolina General Statutes is amended by adding a new section to read:

"§ 145-10.1. *State beverage.*--Milk is hereby adopted as the official State beverage of the State of North Carolina."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 12th day of June, 1987.

S.B. 460

CHAPTER 348

AN ACT CONCERNING STAGGERED TERMS FOR THE TOWN OF LAUREL PARK.

The General Assembly of North Carolina enacts:

Section 1. Section 2 of Chapter 622, Session Laws of 1947 is rewritten to read:

"Sec. 2. In 1987, and quadrennially thereafter, a Mayor shall be elected for a four-year term. In 1987, three commissioners shall be elected. The candidate receiving the highest number of votes for commissioner shall be elected for a four-year term, and the two candidates receiving the next highest numbers of votes shall be elected for two-year terms. In 1989 and quadrennially thereafter, one commissioner shall be elected for a four-year term. In 1989 one commissioner shall be elected for a two-year term. The candidate receiving the highest number of votes for commissioner in 1989 shall be elected for the four-year term, and the candidate receiving the next highest number of votes shall be elected for the two-year term. In 1991 and quadrennially thereafter, two commissioners shall be elected for four-year terms."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 12th day of June, 1987.

S.B. 505

CHAPTER 349

AN ACT TO PROVIDE FOR THE USE OF A FACSIMILE SIGNATURE AND SEAL BY THE SECRETARY OF STATE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 147-36.1 is amended by adding the following at the end:

"Provided, however, that if the volume of documents or certificates to be issued makes an embossed seal and the autograph signature of the deputy or director impractical, the documents may be certified and certificates issued under the facsimile signature and seal of the Secretary of State only."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 12th day of June, 1987.

S.B. 536

CHAPTER 350

AN ACT TO PROVIDE FOR THE TERMINATION OF CERTAIN RAILROAD RIGHTS OF WAY.

The General Assembly of North Carolina enacts:

Section 1. All rights of way for any railroad within Rockingham County that have not been either used by said railroad as a right of way or listed for ad valorem tax purposes with said county for a period of fifty (50) years prior to July 30, 1987, shall be deemed abandoned, and are hereby extinguished; all rights of way herein extinguished shall revert to the owner of the underlying fee.

Sec. 2. This act applies only to Rockingham County.

Sec. 3. This act is effective July 30, 1987.

In the General Assembly read three times and ratified this the 12th day of June, 1987.

S.B. 580

CHAPTER 351

AN ACT TO EXPAND THE POLK COUNTY DEVELOPMENT COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. The Polk County Economic Development Commission is expanded from nine to 11 members. The additional members shall be appointed by the Polk County Board of Commissioners.

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 12th day of June, 1987.

S.B. 700

CHAPTER 352

AN ACT TO PERMIT THE DEPARTMENT OF HUMAN RESOURCES TO ENTER INTO INTERSTATE RECIPROCAL AGREEMENTS FOR THE TRANSFER OF DRIVING UNDER THE INFLUENCE OFFENDERS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-179.2 is amended by adding a new subsection to read:

"(d1) The Department of Human Resources may approve programs offered in another state if they are substantially similar to programs approved in this State, and if that state recognizes North Carolina programs for similar purposes. The defendant shall be responsible for the fees at the approved program."

Sec. 2. G.S. 20-179(m) reads as rewritten:

"(m) Assessment and Treatment Required in Certain Cases. If a defendant being sentenced under this section is placed on probation, he must be required as a condition of that probation to obtain a substance abuse assessment if:

- (1) He had an alcohol concentration of 0.20 or more as indicated by a chemical analysis taken when he was charged; or
- (2) He has a prior conviction for an offense involving impaired driving within the five years preceding the date of the offense for which he is being sentenced and, when he was charged with the current offense, he either:
 - a. Had an alcohol concentration of 0.10 or more; or
 - b. Willfully refused to submit to a chemical analysis.

The judge must require the defendant to obtain the assessment from an area mental health agency, its designated agent, or a private facility licensed by the State for the treatment of alcoholism and substance abuse. In addition, he must require the defendant to participate in a treatment program if recommended by the assessing agency, and he

must require the defendant to execute a Release of Information authorizing the treatment agency to report his progress to the court or the Division of Adult Probation and Parole. The judge may order the defendant to participate in an appropriate treatment program at the time he is ordered to obtain an assessment, or he may order him to reappear in court when the assessment is completed to determine if a condition of probation requiring participation in treatment should be imposed. The judge must require the defendant to pay twenty-five dollars (\$25.00) for the services of the assessment facility and the treatment fees that may be charged by the treatment facility. If the defendant is treated by an area mental health facility, G.S. 122-35.47 applies. Any determinations with regard to the defendant's ability to pay the assessment fee must be made by the judge. In those cases in which no substance abuse handicap is identified, that finding must be forwarded in writing to the court. When treatment is required, the treatment agency's progress reports must be filed with the court or the Division of Adult Probation and Parole at intervals of no greater than six months until the termination of probation or the treatment agency determines and reports that no further treatment is appropriate.

The Department of Human Resources may approve programs offered in another state if they are substantially similar to programs approved in this State, and if that state recognizes North Carolina programs for similar purposes. The defendant shall be responsible for the fees at the approved program."

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 12th day of June, 1987.

S.B. 757

CHAPTER 353

AN ACT TO PROVIDE THAT CERTAIN LEGAL QUALIFICATIONS SHALL COUNT AS RELEVANT EXPERIENCE FOR APPLICANTS FOR A CERTIFIED PUBLIC ACCOUNTANT EXAMINATION.

The General Assembly of North Carolina enacts:

Section 1. The next to the last sentence of G.S. 93-12(5) is rewritten to read:

"A Master's or more advanced degree in accounting, tax law, economics, business administration, or the equivalent thereof, or a law degree with emphasis in taxation or accounting from an accredited college or university may be substituted for one year of experience."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 12th day of June, 1987.

S.B. 813

CHAPTER 354**AN ACT TO REQUIRE IMPLEMENTATION OF LEAST COST PLANNING INITIATIVES BY UTILITIES.**

The General Assembly of North Carolina enacts:

Section 1. G.S. 62-2 is amended by adding a new subsection to read:

"(3a) To assure that resources necessary to meet future growth through the provision of adequate, reliable utility service include use of the entire spectrum of demand-side options, including but not limited to conservation, load management and efficiency programs, as additional sources of energy supply and/or energy demand reductions. To that end, to require energy planning and fixing of rates in a manner to result in the least cost mix of generation and demand-reduction measures which is achievable, including consideration of appropriate rewards to utilities for efficiency and conservation which decrease utility bills."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 12th day of June, 1987.

H.B. 145

CHAPTER 355**AN ACT TO INCREASE THE MAGISTRATE'S JURISDICTION TO ACCEPT GUILTY PLEAS FOR WORTHLESS CHECKS OF NOT MORE THAN ONE THOUSAND DOLLARS.**

The General Assembly of North Carolina enacts:

Section 1. G.S. 7A-273 is amended by rewriting subdivision (8) as follows:

"(8) To accept written appearances, waivers of trial and pleas of guilty in violations of G.S. 14-107 when the amount of the check is one thousand dollars (\$1,000) or less, restitution is made, and the warrant does not charge a fourth or subsequent violation of this statute, and in these cases to enter judgments as the chief district judge directs."

Sec. 2. G.S. 7A-273(6) is amended by deleting the phrase "five hundred dollars (\$500.00)" and substituting "one thousand dollars (\$1,000)".

Sec. 3. G.S. 7A-180(8) is amended by deleting the phrase "four hundred dollars (\$400.00)" and substituting "one thousand dollars (\$1,000)".

Sec. 4. G.S. 15A-1011(a)(6) is amended by deleting the phrase "the amount of the check is three hundred dollars (\$300.00) or less" and substituting "the check is in an amount provided in G.S. 7A-273(8)".

Sec. 5. This act is effective October 1, 1987, and applies to pleas entered on or after that date.

In the General Assembly read three times and ratified this the 12th day of June, 1987.

H.B. 318

CHAPTER 356

AN ACT TO CLASSIFY PROPERTY OWNED BY CERTAIN
NONPROFIT HOMES FOR THE AGED, SICK OR INFIRM
AND EXCLUDE THIS PROPERTY FROM TAXATION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-275 is amended by adding a new subdivision to read:

"(32) Real and personal property owned by a home for the aged, sick, or infirm, that is exempt from tax under Article 4 of this Chapter, and used in the operation of that home. The term 'home for the aged, sick, or infirm' means a self-contained community that (i) is designed for elderly residents; (ii) operates a skilled nursing facility, an intermediate care facility, or a home for the aged; (iii) includes residential dwelling units, recreational facilities, and service facilities; (iv) the charter of which provides that in the event of dissolution, its assets will revert or be conveyed to an entity organized exclusively for charitable, educational, scientific, or religious purposes, and which qualifies as an exempt organization under Section 501(c)(3) of the Internal Revenue Code of 1986; (v) is owned, operated, and managed by one of the following entities:

- A. a congregation, parish, mission, synagogue, temple, or similar local unit of a church or religious body;
- B. a conference, association, division, presbytery, diocese, district, synod, or similar unit of a church or religious body;
- C. a Masonic organization whose property is excluded from taxation pursuant to G.S. 105-275(18); or
- D. a nonprofit corporation governed by a board of directors at least a majority of whose members elected for terms commencing on or before December 31, 1987, shall have

been elected or confirmed by, and all of whose members elected for terms commencing after December 31, 1987, shall be selected by, one or more entities described in A., B., or C. of this subdivision, or organized for a religious purpose as defined in G.S. 105-278.3(d)(1); and

(vi) has an active program to generate funds through one or more sources, such as gifts, grants, trusts, bequests, endowment, or an annual giving program, to assist the home in serving persons who might not be able to reside at the home without financial assistance or subsidy."

Sec. 2. This act is effective for tax years beginning on and after January 1, 1987, and also applies to prior tax years for which contested tax levy proceedings have not been finally determined as of the ratification of this act.

In the General Assembly read three times and ratified this the 12th day of June, 1987.

H.B. 531

CHAPTER 357

AN ACT TO INCLUDE IN THE LIST OF THOSE WHO SHALL BE GRANTED LETTERS OF ADMINISTRATION, IN ORDER OF PRIORITY, THE NEXT OF KIN OF THE DECEDENT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 28A-4-1(b) reads as rewritten:

"(b) Letters of Administration. Letters of administration shall be granted to persons who are qualified to serve, in the following order, unless the clerk of superior court in his discretion determines that the best interests of the estate otherwise require:

- (1) The surviving spouse of the decedent;
- (2) Any devisee of the testator;
- (3) Any heir of the decedent;
- (3a) Any next of kin, with a person who is of a closer kinship as computed pursuant to G.S. 104A-1 having priority;
- (4) Any creditor to whom the decedent became obligated prior to his death;
- (5) Any person of good character residing in the county who applies therefor; and
- (6) Any other person of good character not disqualified under G.S. 28A-4-2.

When applicants are equally entitled, letters shall be granted to the applicant who, in the judgment of the clerk of superior court, is most likely to administer the estate advantageously, or they may be granted

to any two or more of such applicants."

Sec. 2. This act shall become effective with respect to the estates of decedents dying on or after October 1, 1987.

In the General Assembly read three times and ratified this the 12th day of June, 1987.

H.B. 564

CHAPTER 358

AN ACT TO AUTHORIZE RESEARCH INVOLVING VOLUNTARY CLIENTS AT STATE FACILITIES FOR THE MENTALLY ILL.

The General Assembly of North Carolina enacts:

Section 1. Part I of Article 5 of Chapter 122C of the General Statutes is amended by adding a new section to read:

" § 122C-210.2. *Research at State facilities for the mentally ill.*--(a) For research purposes, State facilities for the mentally ill may be designated by the Secretary as facilities for the voluntary admission of adults who are not admissible as clients otherwise. Designation of these facilities shall be made in accordance with rules of the Secretary that assure the protection of those admitted for research purposes.

(b) Individuals may be admitted to such designated facilities on either an outpatient or inpatient basis.

(c) The Human Rights Committee of the designated facility shall monitor the care of individuals admitted for research during their participation in any research program.

(d) For these individuals admitted to such designated facilities for research purposes only, the following provisions shall apply:

- (1) A written application for admission pursuant to G.S. 122C-211(a) and an examination by a physician within 24 hours of admission shall be provided to each of these individuals;
- (2) They shall be exempt from the provisions of G.S. 122C-57(a) governing the rights to treatment and to a treatment plan; the requirements of G.S. 122C-61(2) and G.S. 122C-212(b); and the requirements of any single portal of entry and exit plan; however, nothing in this section shall take away the individual's right to be informed of the potential risks and alleged benefits of their participation in any research program;
- (3) The Secretary shall exempt these individuals from the provisions of Article 7 of Chapter 143 of the General Statutes requiring payment for treatment in a State institution. The Secretary may also authorize reasonable compensation to be paid to individuals participating in research projects for their services; provided, that the

- compensation is paid from research grant funds; and
- (4) The Commission shall adopt rules regarding the admission, care and discharge of those individuals admitted for research purposes only."

Sec. 2. G.S. 143-118 is amended by adding a new subsection to read:

"(f) For any client admitted under Part 2 of Article 5 of G.S. 122C to a State facility for the mentally ill designated for research purposes in accordance with G.S. 122C-210.2, the Secretary may reduce the rates set by compromise in G.S. 143-118(e) by not more than one-half the amount of that rate."

Sec. 3. This act shall become effective October 1, 1987.

In the General Assembly read three times and ratified this the 12th day of June, 1987.

H.B. 635

CHAPTER 359

AN ACT TO ALLOW ABSENTEE VOTING CONDUCTED BY
THE MOORESVILLE MUNICIPAL BOARD OF ELECTIONS.

The General Assembly of North Carolina enacts:

Section 1. The Charter of the Town of Mooresville, being Chapter 239, Session Laws of 1975, is amended by adding a new section to read:

"Sec. 4.4. Absentee Voting. Absentee voting shall be allowed in the Town of Mooresville if city elections are conducted by a municipal board of elections, and any references in G.S. 163-302 that refer to the county board of elections shall, for the Town of Mooresville, refer to the municipal board of elections if city elections are conducted by a municipal board of elections. The State Board of Elections may adopt rules to regulate this section."

Sec. 2. This act shall become effective with respect to all elections held on or after July 1, 1987.

In the General Assembly read three times and ratified this the 12th day of June, 1987.

H.B. 969

CHAPTER 360

AN ACT TO CLARIFY THE PROCEDURE FOR CORRECTING
ERRORS IN RECORDED INSTRUMENTS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 47-36.1 is amended by adding after the second sentence a new sentence to read:

"If the statement of explanation is not signed by the parties who signed the original instrument, it shall state that the person signing the statement is the attorney who drafted the original instrument."

Sec. 2. G.S. 47-48 is amended by deleting "1974" and substituting "1980".

Sec. 3. This act is effective upon ratification and applies to corrections made on or after that date.

In the General Assembly read three times and ratified this the 12th day of June, 1987.

H.B. 908

CHAPTER 361

AN ACT TO REPEAL OBSOLETE LOCAL ACTS RELATING TO CHATHAM COUNTY.

The General Assembly of North Carolina enacts:

Section 1. The following acts of the General Assembly, to the extent that such acts apply to Chatham County, are repealed:

Laws of 1771, Chapter 21

Laws of 1774, Chapter 23

Laws of 1778, April Session, Chapter 21

Laws of 1782, Chapter 32

Laws of 1784, April Session, Chapter 30

Laws of 1784, October Session, Chapter 30

Laws of 1790, Chapter 27

Laws of 1795, Chapter 65

Laws of 1796, Chapter 30

Laws of 1798, Chapter 94

Laws of 1800, Chapter 74

Laws of 1801, Chapter 100

Laws of 1804, Chapter 83

Laws of 1805, Chapter 89

Laws of 1806, Chapter 90

Laws of 1808, Chapter 106

Laws of 1810, Chapters 98 and 121

Private Laws of 1816, Chapter 133

Private Laws of 1818, Chapter 28

Private Laws of 1820, Chapter 68

Private Laws of 1821, Chapter 63

Private Laws of 1822, Chapter 116

Public Laws of 1826-27, Chapter 22

Private Laws of 1828-29, Chapters 74 and 133
Private Laws of 1829-30, Chapters 114 and 130, Chapter 141 as to Section 2 only
Private Laws of 1830-31, Chapters 61, 94, and 157
Private Laws of 1832-33, Chapter 89
Private Laws of 1833-34, Chapter 91
Private Laws of 1835, Chapters 86 and 104
Public Laws of 1850-51, Chapter 76
Private Laws of 1860-61, Chapter 53
Private Laws of 1862-63, Chapter 13
Public Laws of 1868-69, Chapter 185, except Section 1
Private Laws of 1869-70, Chapter 2
Public Laws of 1870-71, Chapter 114
Private Laws of 1871-72, Chapter 25
Public Laws of 1872-73, Chapters 167 and 171
Public Laws of 1873-74, Chapter 137
Private Laws of 1874-75, Chapter 145
Public Laws of 1874-75, Chapter 92
Public Laws of 1876-77, Chapters 83, 135, and 260
Public Laws of 1879, Chapters 135 and 232
Public Laws of 1880, Special Session, Chapters 38 and 39
Public Laws of 1881, Chapters 55, 188, and 234
Public Laws of 1883, Chapters 142 and 166
Public Laws of 1885, Chapters 43, 172, 179, Chapter 208 as to Section 8 only, Chapters 311 and 412
Public Laws of 1887, Chapter 92
Public Laws of 1889, Chapter 28, Chapter 357 as to Section 5 only, Chapter 362, and Chapter 500 as to Section 21 only
Public Laws of 1891, Chapters 327 and 415
Private Laws of 1893, Chapter 23 as to Section 8 only
Public Laws of 1893, Chapters 298 and 326
Public Laws of 1895, Chapters 68, 269, and 420
Public Laws of 1897, Chapters 9, 68, 157, 309, and 407
Public Laws of 1899, Chapters 327, 562, 581, and 696
Public Laws of 1901, Chapters 230, 259, 531, 554, and 580
Public Laws of 1903, Chapters 25, 76, 204, 328, 482, and 504
Public Laws of 1905, Chapters 81, 102, 197, 297, 359, 426, 621, 718, and 728
Private Laws of 1907, Chapter 442, Section 5 only
Public Laws of 1907, Chapters 30, 326, 442, 507, and 601
Private Laws of 1909, Chapter 105, Section 25 only, Chapters 267 and 392
Public Laws of 1909, Chapters 141, 530, 549, and 864

Private Laws of 1911, Chapters 144, 146, 194, and 378, and Chapter 428, Section 13 only

Public-Local Laws of 1911, Chapters 103 and 523

Public-Local Laws of 1913, Extra Session, Chapter 244, Section 6 only

Public-Local Laws of 1913, Chapter 485

Public Laws of 1913, Chapter 142

Public-Local Laws of 1915, Chapters 151 and 236

Public-Local Laws of 1917, Chapters 27, 358, 617, 644, 647, and 660

Public Laws of 1917, Chapter 228

Public-Local Laws of 1919, Chapters 144, 348, 394, 550, 551, and 586

Public Laws of 1919, Chapter 35

Public-Local Laws of 1921, Extra Session, Chapter 214

Private Laws of 1921, Chapter 146

Public-Local Laws of 1921, Chapters 74, 116, and 248

Public Laws of 1921, Chapter 113

Public-Local Laws of 1923, Chapter 140

Public-Local Laws of 1924, Extra Session, Chapter 209

Public-Local Laws of 1925, Chapters 407, 526, 542, and 602

Public-Local Laws of 1927, Chapters 34, 606, and 608

Public Laws of 1929, Chapters 169, 214, and 273

Public-Local Laws of 1931, Chapter 81

Public Laws of 1931, Chapter 372

Public Laws of 1933, Chapters 63 and 536

Public-Local Laws of 1937, Chapter 236

Public-Local Laws of 1939, Chapter 153

Session Laws of 1943, Chapter 518

Session Laws of 1947, Chapters 47 and 643

Session Laws of 1949, Chapters 404, 832, 844, 906, and 907

Sec. 2. This act shall become effective 10 days after ratification.

In the General Assembly read three times and ratified this the 12th day of June, 1987.

H.B. 944

CHAPTER 362

**AN ACT TO AUTHORIZE AN ADDITIONAL DEPUTY SHERIFF
AND AN ADDITIONAL DEPUTY REGISTER OF DEEDS IN
EACH COUNTY.**

The General Assembly of North Carolina enacts:

Section 1. G.S. 153A-103(2) reads as rewritten:

"(2) Each sheriff and register of deeds elected by the people is entitled to at least ~~one deputy~~ two deputies who shall be reasonably compensated by the county-, provided that the register of deeds justifies to the Board of County Commissioners the necessity of the second deputy. ~~The~~ Each deputy so appointed shall serve at the pleasure of the appointing officer."

Sec. 2. This act shall become effective July 1, 1987.

In the General Assembly read three times and ratified this the 12th day of June, 1987.

H.B. 946

CHAPTER 363

AN ACT REGARDING LIGHTING EQUIPMENT ON SEMITRAILERS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-129.1 reads as rewritten:

"§ 20-129.1. *Additional lighting equipment required on certain vehicles.*--In addition to other equipment required in this Chapter, the following vehicles shall be equipped as follows:

(1) On every bus or truck, whatever its size, there shall be the following:

On the rear, two reflectors, one at each side, and one stoplight.

(2) On every bus or truck 80 inches or more in overall width, in addition to the requirements in subdivision (1):

On the front, two clearance lamps, one at each side.

On the rear, two clearance lamps, one at each side.

On each side, two side marker lamps, one at or near the front and one at or near the rear.

On each side, two reflectors, one at or near the front and one at or near the rear.

(3) On every truck tractor:

On the front, two clearance lamps, one at each side.

On the rear, one stoplight.

(4) On every trailer or semitrailer having a gross weight of 4,000 pounds or more:

On the front, two clearance lamps, one at each side.

On each side, two side marker lamps, one at or near the front and one at or near the rear.

On each side, two reflectors, one at or near the front and one at or near the rear.

On the rear, two clearance lamps, one at each side, also two reflectors, one at each side, and one stoplight.

(5) On every pole trailer having a gross weight of 4,000 pounds or more:

On each side, one side marker lamp and one clearance lamp which may be in combination, to show to the front, side and rear.

On the rear of the pole trailer or load, two reflectors, one at each side.

(6) On every trailer, semitrailer or pole trailer having a gross weight of less than 4,000 pounds:

On the rear, two reflectors, one on each side. If any trailer or semitrailer is so loaded or is of such dimensions as to obscure the spotlight on the towing vehicle, then such vehicle shall also be equipped with one spotlight.

(7) Front clearance lamps and those marker lamps and reflectors mounted on the front or on the side near the front of a vehicle shall display or reflect an amber color.

(8) Rear clearance lamps and those marker lamps and reflectors mounted on the rear or on the sides near the rear of a vehicle shall display or reflect a red color.

(9) Brake lights (and/or brake reflectors) on the rear of a motor vehicle shall be red. The light illuminating the license plate shall be white. All other lights shall be white, amber, yellow, clear or red.

(10) On every trailer and semitrailer which is 30 feet or more in length and has a gross weight of 4,000 pounds or more, one combination marker lamp showing amber and mounted on the bottom side rail at or near the center of each side of the trailer."

Sec. 2. This act shall become effective March 15, 1989.

In the General Assembly read three times and ratified this the 12th day of June, 1987.

H.B. 1122

CHAPTER 364

AN ACT TO ALLOW REAL PROPERTY TO BE DISPOSED OF BY REDEVELOPMENT COMMISSIONS AT SEALED BIDS AND BY EXCHANGE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 160A-514(c) reads as rewritten:

"(c) A commission may sell, exchange, or otherwise transfer the fee or any lesser interest in real property in a redevelopment project area to any redeveloper for any public or private use that accords with the redevelopment plan, subject to such covenants, conditions and restrictions as the commission may deem to be in the public interest and in furtherance of the purposes of this Article. In the sale, exchange, or transfer of property, the commission shall follow the procedure set out in ~~either~~ G.S. 160A-268, G.S. 160A-269, or G.S.

160A-270 or G.S. 160A-271 for the sale disposition of property by a city council."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 12th day of June, 1987.

S.B. 206

CHAPTER 365

AN ACT TO AUTHORIZE THE CITY OF RALEIGH TO
CONTINUE CERTAIN ECONOMIC DEVELOPMENT
ACTIVITIES.

The General Assembly of North Carolina enacts:

Section 1. Section 1, Chapter 992, Session Laws 1981, (reenacted by Section 1 of Chapter 35, Session Laws of 1985) is reenacted but shall expire on June 30, 1991. Such expiration shall not affect the validity of any action taken on or before that date.

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 15th day of June, 1987.

S.B. 227

CHAPTER 366

AN ACT TO MAKE THE SHAD BOAT THE OFFICIAL STATE
HISTORICAL BOAT.

Whereas, the Shad Boat is a type of craft indigenous to North Carolina, having its origins at Roanoke Island; and

Whereas, the Shad Boat was developed to meet the particular needs of the pound net fishermen in the North Carolina sounds, utilizing native juniper and other materials readily available to local craftsmen; and

Whereas, the Shad Boat became known throughout coastal North Carolina for its unique design, unusually shallow draft, exceptional maneuverability, and ease of handling in heavy going, with its pleasing lines so distinctive as to be readily recognized by even the land-bound; and

Whereas, the Shad Boat gained a reputation for seaworthiness, making it highly regarded by those who make their living on the water and trust their safety to their boats; Now, therefore,

The General Assembly of North Carolina enacts:

Section 1. Chapter 145 of the General Statutes is amended by adding a new section to read:

" § 145-11. *State historical boat.*--The Shad Boat is adopted as the official State historical boat of the State of North Carolina."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 15th day of June, 1987.

S.B. 253

CHAPTER 367

AN ACT TO CLARIFY THE DEFINITION OF "PRIVATE CLUB"
IN G.S. 130A-247.

The General Assembly of North Carolina enacts:

Section 1. G.S. 130A-247(2) is amended by inserting ". does not provide food or lodging for pay to anyone who is not a member or a member's guest," between "membership" and "and".

Sec. 2. This act shall become effective January 1, 1988.

In the General Assembly read three times and ratified this the 15th day of June, 1987.

S.B. 328

CHAPTER 368

AN ACT TO AMEND THE STRUCTURAL PEST CONTROL LAW
TO PROVIDE FOR CIVIL PENALTIES, APPLICATOR
TRAINING AND STAGGERED LICENSING.

The General Assembly of North Carolina enacts:

Section 1. Article 4C of Chapter 106 of the General Statutes is amended by adding a new section as follows:

" § 106-65.41. *Civil Penalties.*--A civil penalty of not more than two thousand dollars (\$2,000) may be assessed by the Committee against any person for any one or more of the causes set forth in G.S. 106-65.28(a)(1) through (11). In determining the amount of any penalty, the Committee shall consider the degree and extent of harm caused by the violation. No civil penalty may be assessed under this section unless the person has been given an opportunity for a hearing pursuant to Chapter 150B of the General Statutes. Assessments may be collected, following judicial review, if any, of the Committee's final decision imposing the assessment, in any lawful manner for the collection of a debt."

Sec. 2. G.S. 106-65.29 is amended by:

(a) changing the period at the end of subdivision (1) thereof to a comma and adding the following:

"and the amount and kind of training required of an applicant for an operator's identification card.";

(b) adding the following new subdivision (9):

"(9) Fees for training materials provided by the Committee or the Division. Such fees may be placed in a revolving fund to be used for training and continuing education purposes and shall not revert to the General Fund."

Sec 3. G.S. 106-65.31 is amended by adding the following new subsection:

"(c) Notwithstanding any other provision of this law, the Committee may adopt rules to provide for the issuance of licenses, certified applicator's cards, and operator's identification cards with staggered expiration dates and may prorate renewal fees on a monthly basis to implement such rules."

Sec. 4. Section 1 of this act shall become effective October 1, 1987. The remainder of this act shall become effective July 1, 1987.

In the General Assembly read three times and ratified this the 15th day of June, 1987.

S.B. 468

CHAPTER 369

AN ACT TO EXTEND THE EXEMPTION FROM THE
INSURANCE LAW OF MANUFACTURER AND SELLER
WARRANTIES TO ALL GOODS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 58-3.1. reads as rewritten:

"§ 58-3.1. ~~Motor vehicle warranties~~ Warranties by manufacturers, distributors, or sellers of goods or services.--~~(a) Any motor vehicle warranty issued by a person as defined in this Article, other than a warranty made solely by the manufacturer or seller without charge or an extended warranty offered as an option by a manufacturer or seller or authorized distributor of foreign manufactured automobiles for charge, guaranteeing indemnity for defective parts, mechanical breakdown and labor shall be a contract of insurance, provided that a product guaranty or warranty which accompanies the sale of a product used in the maintenance or operation of a motor vehicle shall not be a contract of insurance under this Chapter. As used in this section:~~

- (1) 'Goods' means all things that are moveable at the time of sale or at the time the buyer takes possession. 'Goods' includes things not in existence at the time the transaction is entered into; and includes things that are furnished or used at the time of sale or subsequently in modernization, rehabilitation, repair, alteration, improvement, or construction on real property so as to become a part of real property whether or not they are severable from real property.

(2) 'Services' means work, labor, and other personal services.

(b) Any warranty made solely by a manufacturer, distributor, or seller of goods or services without charge, or an extended warranty offered as an option and made solely by a manufacturer, distributor, or seller of goods or services for charge, that guarantees indemnity for defective parts, mechanical or electrical breakdown, labor, or any other remedial measure, including replacement of goods or repetition of services, shall not be a contract of insurance under this Chapter.

(c) Nothing in this section affects the provisions of Article 3C of this Chapter. Any warranty or extended warranty made by any person other than the manufacturer, distributor, or seller of the warranted goods or services is a contract of insurance."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 15th day of June, 1987.

H.B. 551

CHAPTER 370

AN ACT CONCERNING VOLUNTARY ADMISSIONS AND DISCHARGES OF MINORS AT FACILITIES FOR THE MENTALLY ILL AND SUBSTANCE ABUSERS.

The General Assembly of North Carolina enacts:

Section 1. Part 3 of Article 5 of Chapter 122C of the General Statutes is rewritten to read:

"Part 3. Voluntary Admissions and Discharges, Minors,
Facilities for the Mentally Ill and Substance Abusers.

"§ 122C-221. *Admissions.*--(a) Except as otherwise provided in this Part, a minor may be admitted to a facility if the minor is mentally ill or a substance abuser and in need of treatment. Except as otherwise provided in this Part, the provisions of G.S. 122C-211 shall apply to admissions of minors under this Part. Except as provided in G.S. 90-21.5, in applying for admission to a facility, in consenting to medical treatment when consent is required, and in any other legal procedure under this Article, the legally responsible person shall act for the minor. If a minor reaches the age of 18 while in treatment under this Part, further treatment is authorized only on the written authorization of the client or under the provisions of Part 7 or Part 8 of Article 5 of this Chapter.

(b) The Commission shall adopt rules governing procedures for admission to 24-hour facilities not falling within the category of facilities where freedom of movement is restricted. These rules shall be designed to ensure that no minor is improperly admitted to or improperly remains in a 24-hour facility.

" § 122C-222. *Admissions to State facilities.*--Admission of a minor who is a resident of a county that is not in a single portal area shall be made to a State facility following screening and upon referral by an area authority, a physician, or an eligible psychologist. Further planning of treatment and discharge for the minor is the joint responsibility of the State facility and the person making the referral.

" § 122C-223. *Emergency admission to a 24-hour facility.*--(a) In an emergency situation, when the legally responsible person does not appear with the minor to apply for admission, a minor who is mentally ill or a substance abuser and in need of treatment may be admitted to a 24-hour facility upon his own written application. The application shall serve as the initiating document for the hearing required by G.S. 122C-224.

(b) Within 24 hours of admission, the facility shall notify the legally responsible person of the admission unless notification is impossible due to an inability to identify, to locate, or to contact him after all reasonable means to establish contact have been attempted.

(c) If the legally responsible person cannot be located within 72 hours of admission, the responsible professional shall initiate proceedings for juvenile protective services as described in Article 44 of Chapter 7A of the General Statutes in either the minor's county of residence or in the county in which the facility is located.

(d) Within 24 hours of an emergency admission to a State facility, the State facility shall notify the area authority and, as appropriate, the minor's physician or eligible psychologist. Further planning of treatment and discharge for the minor is the joint responsibility of the State facility and the appropriate person in the community.

" § 122C-224. *Judicial review of voluntary admission.*--(a) When a minor is admitted to a 24-hour facility where the minor will be subjected to the same restrictions on his freedom of movement present in the State facilities for the mentally ill, or to similar restrictions, a hearing shall be held by the district court in the county in which the 24-hour facility is located within 15 days of the day that the minor is admitted to the facility. A continuance of not more than five days may be granted.

(b) Before the admission, the facility shall provide the minor and his legally responsible person with written information describing the procedures for court review of the admission and informing them about the discharge procedures. They shall also be informed that, after a written request for discharge, the facility may hold the minor

for 72 hours during which time the facility may apply for a petition for involuntary commitment.

(c) Within 24 hours after admission, the facility shall notify the clerk of court in the county where the facility is located that the minor has been admitted and that a hearing for concurrence in the admission must be scheduled. At the time notice is given to schedule a hearing, the facility shall notify the clerk of the names and addresses of the legally responsible person and the responsible professional.

"§ 122C-224.1. *Duties of clerk of court.*--(a) Within 48 hours of receipt of notice that a minor has been admitted to a 24-hour facility wherein his freedom of movement will be restricted, the clerk of superior court, under direction of the district court judge, shall appoint an attorney for the minor. When a minor has been admitted to a State facility for the mentally ill, the attorney appointed shall be the attorney employed in accordance with G.S. 122C-270(a) through (c). All minors shall be conclusively presumed to be indigent, and it shall not be necessary for the court to receive from any minor an affidavit of indigency. The attorney shall be paid a reasonable fee fixed by the court in the same manner as fees for attorneys appointed in cases of indigency. The judge may require payment of the attorney's fee from a person other than the minor as provided in G.S. 7A-450.1 through G.S. 7A-450.4.

(b) Upon receipt of notice that a minor has been admitted to a 24-hour facility wherein his freedom of movement will be restricted, the clerk shall calendar a hearing to be held within 15 days of admission for the purpose of review of the minor's admission. Notice of the time and place of the hearing shall be given as provided in G.S. 1A-1, Rule 4(j) to the attorney in lieu of the minor, as soon as possible but not later than 72 hours before the scheduled hearing. Notice of the hearing shall be sent to the legally responsible person and the responsible professional as soon as possible but not later than 72 hours before the hearing by first-class mail postage prepaid to the individual's last known address.

(c) The clerk shall schedule all hearings and rehearings and send all notices as required by this Part.

"§ 122C-224.2. *Duties of the attorney for the minor.*--(a) The attorney shall meet with the minor within 10 days of his appointment but not later than 48 hours before the hearing. In addition, the attorney shall inform the minor of the scheduled hearing and shall give the minor a copy of the notice of the time and place of the hearing no later than 48 hours before the hearing.

(b) The attorney shall counsel the minor concerning the hearing procedure and the potential effects of the hearing proceeding on the minor. If the minor does not wish to appear, the attorney shall file a motion with the court before the scheduled hearing to waive the minor's right to be present at the hearing procedure except during the minor's own testimony. If the attorney determines that the minor does not wish to appear before the judge to provide his own testimony, the attorney shall file a separate motion with the court before the hearing to waive the minor's right to testify.

(c) In all actions on behalf of the minor, the attorney shall represent the minor until formally relieved of the responsibility by the judge.

"§ 122C-224.3. *Hearing for review of admission.*--(a) Hearings shall be held at the 24-hour facility in which the minor is being treated, if it is located within the judge's judicial district, unless the judge determines that the court calendar will be disrupted by such scheduling. In cases where the hearing cannot be held in the 24-hour facility, the judge may schedule the hearing in another location, including the judge's chambers. The hearing may not be held in a regular courtroom, over objection of the minor's attorney, if in the discretion of the judge a more suitable place is available.

(b) The minor shall have the right to be present at the hearing unless the judge rules favorably on the motion of the attorney to waive the minor's appearance. However, the minor shall retain the right to appear before the judge to provide his own testimony and to respond to the judge's questions unless the judge makes a separate finding that the minor does not wish to appear upon motion of the attorney.

(c) Certified copies of reports and findings of physicians, psychologists and other responsible professionals as well as previous and current medical records are admissible in evidence, but the minor's right, through his attorney, to confront and cross-examine witnesses may not be denied.

(d) Hearings shall be closed to the public unless the attorney requests otherwise.

(e) A copy of all documents admitted into evidence and a transcript of the proceedings shall be furnished to the attorney, on request, by the clerk upon the direction of a district court judge. The copies shall be provided at State expense.

(f) For an admission to be authorized beyond the hearing, the minor must be (1) mentally ill or a substance abuser and (2) in need of further treatment at the 24-hour facility to which he has been admitted. Further treatment at the admitting facility should be undertaken only when lesser measures will be insufficient. It is not

necessary that the judge make a finding of dangerousness in order to support a concurrence in the admission.

(g) The court shall make one of the following dispositions:

- (1) If the court finds by clear, cogent, and convincing evidence that the requirements of subsection (f) have been met, the court shall concur with the voluntary admission and set the length of the authorized admission of the minor for a period not to exceed 90 days; or
- (2) If the court determines that there exist reasonable grounds to believe that the requirements of subsection (f) have been met but that additional diagnosis and evaluation is needed before the court can concur in the admission, the court may make a one time authorization of up to an additional 15 days of stay, during which time further diagnosis and evaluation shall be conducted; or
- (3) If the court determines that the conditions for concurrence or continued diagnosis and evaluation have not been met, the judge shall order that the minor be released.

(h) The decision of the District Court in all hearings and rehearings is final. Appeal may be had to the Court of Appeals by the State or by any party on the record as in civil cases. The minor may be retained and treated in accordance with this Part, pending the outcome of the appeal, unless otherwise ordered by the District Court or the Court of Appeals.

" § 122C-224.4. *Rehearings.*--(a) A minor admitted to a 24-hour facility upon order of the court for further diagnosis and evaluation shall have the right to a rehearing if the responsible professional determines that the minor is in need of further treatment beyond the time authorized by the court for diagnosis and evaluation.

(b) A minor admitted to a 24-hour facility upon the concurrence of the court shall have the right to a rehearing for further concurrence in continued treatment before the end of the period authorized by the court. The court shall review the continued admission in accordance with the hearing procedures in this Part. The court may order discharge of the minor if the minor no longer meets the criteria for admission. If the minor continues to meet the criteria for admission the court shall concur with the continued admission of the minor and set the length of the authorized admission for a period not to exceed 180 days. Subsequent rehearings shall be scheduled at the end of each subsequent authorized treatment period, but no longer than every 180 days.

(c) The responsible professional shall notify the clerk, no later than 15 days before the end of the authorized admission, that continued stay beyond the authorized admission is recommended for the minor. The clerk shall calendar the rehearing to be held before the end of the current authorized admission.

"§ 122C-224.5. *Transportation.*--When it is necessary for a minor to be transported to a location other than the treating facility for the purpose of a hearing, transportation shall be provided under the provisions of G.S. 122C-251. However, the 24-hour facility may obtain permission from the court to routinely provide transportation of minors to and from hearings.

"§ 122C-224.6. *Treatment pending hearing and after authorization for or concurrence in admission.*--(a) Pending the initial hearing and after authorization for further diagnosis and evaluation, or concurrence in admission, the responsible professional may administer to the minor reasonable and appropriate medication and treatment that is consistent with accepted medical standards and consistent with Article 3 of this Chapter.

(b) The responsible professional may release the minor conditionally for periods not in excess of 30 days on specified appropriate conditions. Violation of the conditions is grounds for return of the minor to the 24-hour facility. A law enforcement officer, on request of the responsible professional, shall take the minor into custody and return him to the facility in accordance with G.S. 122C-205.

"§ 122C-224.7. *Discharge.*--(a) The responsible professional shall unconditionally discharge a minor from treatment at any time that it is determined that the minor is no longer mentally ill or a substance abuser, or no longer in need of treatment at the facility.

(b) The legally responsible person may file a written request for discharge from the facility at any time. The facility may hold the minor in the facility for 72 hours after receipt of the request for discharge. If the responsible professional believes that the minor is mentally ill and dangerous to himself or others, he may file a petition for involuntary commitment under the provisions of Part 7 of this Article. If the responsible professional believes that the minor is a substance abuser and dangerous to himself or others, he may file a petition for involuntary commitment under the provisions of Part 8 of this Article. If an order authorizing the holding of the minor under involuntary commitment procedures is issued, further treatment and holding shall follow the provisions of Part 7 or Part 8 whichever is applicable. If an order authorizing the holding of the minor under

involuntary commitment procedures is not issued, the minor shall be discharged.

(c) If a client reaches age 18 while in treatment, and the client refuses to sign an authorization for continued treatment within 72 hours of reaching 18, he shall be discharged unless the responsible professional obtains an order to hold the client under the provisions of Part 7 or Part 8 of this Article pursuant to an involuntary commitment."

Sec. 2. This act shall become effective October 1, 1987.

In the General Assembly read three times and ratified this the 15th day of June, 1987.

H.B. 636

CHAPTER 371

AN ACT TO PERMIT PROSPECTIVE ADOPTIVE PARENTS TO PETITION TO TERMINATE PARENTAL RIGHTS WITHOUT PRIOR ADJUDICATION OF ABUSE OR NEGLECT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 48-5(d) is rewritten to read:

"(d) In the event that a district court has not heretofore entered an order terminating parental rights pursuant to former G.S. 7A-288 or Article 24B of Chapter 7A, the petitioner in the adoption proceeding may file a petition in district court to terminate the parental rights of either or both parents pursuant to Article 24B of Chapter 7A. In this case the court in the adoption proceeding, upon request of the petitioner, shall continue the adoption proceeding until a final disposition has been made on the petition to terminate parental rights."

Sec. 2. G.S. 7A-289.24(7) is rewritten to read:

"(7) Any person who has filed a petition for adoption pursuant to Chapter 48 of the General Statutes."

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 15th day of June, 1987.

H.B. 786

CHAPTER 372

AN ACT TO REQUIRE THAT TREATMENT-RELATED RECORDS ACCOMPANY A JUVENILE TO TRAINING SCHOOL.

The General Assembly of North Carolina enacts:

Section 1. G.S. 7A-652 is amended by adding a new subsection (d1) after subsection (d) as follows:

"(d1) The Chief Court Counselor shall insure that the records requested by the Director of Youth Services accompany the juvenile upon transportation for admittance to a training school or, if not obtainable at the time of admission, are sent to the training school within 15 days of the admission. If records requested by the Division of Youth Services for admission do not exist, to the best knowledge of the Chief Court Counselor, he shall so stipulate in writing to the training school. If such records do exist, but the Chief Court Counselor is unable to obtain copies of them, a district court judge may order that the records from public agencies be made available to the training school. Records that are confidential by law shall remain confidential and the Division of Youth Services shall be bound by the specific laws governing the confidentiality of these records. All records shall be used in a manner consistent with the best interest of the juvenile."

Sec. 2. This act shall become effective October 1, 1987.

In the General Assembly read three times and ratified this the 15th day of June, 1987.

H.B. 889

CHAPTER 373

**AN ACT TO PROVIDE THAT DUPLIN COUNTY MAY BE AN
ALTERNATIVE SITE FOR STATE PRISON FACILITIES.**

The General Assembly of North Carolina enacts:

Section 1. Subdivision (8) of Section 4 of Chapter 3 of the 1987 Session Laws reads as rewritten:

"(8) To construct 32, 50-bed minimum custody, inmate housing units with support facilities on State property adjacent to or within the following existing prison facilities:

| <u>Facility</u> | <u>Housing Units</u> |
|------------------|----------------------|
| Caldwell | 2 |
| Rutherford | 2 |
| Mecklenburg I | 2 |
| Rowan | 1 |
| Durham | 2 |
| Wake Advancement | 4 |
| Carteret | 2 |
| Forsyth | 2 |
| Davidson | 2 |
| Guilford | 1 |
| Robeson | 2 |
| New Hanover | 1 |
| Orange | 3 |

| | |
|-----------|----|
| Sanford | 2 |
| Caledonia | 4 |
| | 32 |

If, in the preparation for construction, conditions are discovered at any of the foregoing sites making them unsuitable for construction, such housing units and related support facilities may be constructed on State property adjacent to or within the State prison facilities in Wilkes County, ~~or~~ Rutherford County, or Duplin County."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 15th day of June, 1987.

H.B. 1035

CHAPTER 374

AN ACT TO REDUCE THE AMOUNT OF LIABILITY INSURANCE THAT MUST BE POSSESSED BY CERTAIN BUS LINES OPERATING ONLY IN NORTH CAROLINA.

The General Assembly of North Carolina enacts:

Section 1. G.S. 62-268 reads as rewritten:

" § 62-268. *Security for protection of public; liability insurance.*--No certificate, permit or broker's license shall be issued or remain in force until the applicant shall have procured and filed with the Division of Motor Vehicles such security bond, insurance or self-insurance for the protection of the public as the Commission shall by regulation require. The Commission shall require that every motor carrier for which a certificate, permit, or license is required by the provision of this Chapter, shall maintain liability insurance or satisfactory surety of at least fifty thousand dollars (\$50,000) because of bodily injury to or death of one person in any one accident and, subject to said limit for one person, one hundred thousand dollars (\$100,000) because of bodily injury to or death of two or more persons in any one accident, and fifty thousand dollars (\$50,000) because of injury to or destruction of property of others in any one accident; and the Commission may require any greater amount of insurance as may be necessary for the protection of the public. Notwithstanding any rule or regulation to the contrary, the Commission shall not require that any insurance procured and filed be provided in any single policy of insurance or through a single insurer, if the insurers involved are otherwise qualified. A motor carrier may satisfy the requirements of the Commission by procuring insurance with coverage and limits of liability required by the Commission in one or more policies of insurance issued by one or more insurers.

Notwithstanding any other provisions of this section or Chapter, bus companies shall file with the Commission proof of financial responsibility in the form of bonds, policies of insurance, or shall qualify as a self insurer, with minimum levels of financial responsibility as prescribed for motor carriers of passengers pursuant to the provisions of 49 U.S.C. § 10927(a)(1). Provided, further, that no bus company operating solely within the State of North Carolina and which is exempt from regulation under the provisions of G.S. 62-260(a)(7) shall be required to file with the Commission proof of the financial responsibility in excess of one million five hundred thousand dollars (\$1,500,000)."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 15th day of June, 1987.

S.B. 200

CHAPTER 375

AN ACT TO AUTHORIZE CARTERET COUNTY TO LEVY A ROOM OCCUPANCY AND TOURISM DEVELOPMENT TAX.

The General Assembly of North Carolina enacts:

Section 1. Levy of Tax. (a) The Board of Commissioners of Carteret County may, by resolution, after not less than 10 days' public notice and after public hearing held pursuant thereto, levy a room occupancy and tourism development tax.

(b) Collection of the tax, and liability therefor, shall begin and continue only on and after the first day of a calendar month set by the board of county commissioners in the resolution levying the tax, which in no case may be earlier than the first day of the second succeeding calendar month after the date of adoption of the resolution.

Sec. 2. Occupancy Tax. (a) The county room occupancy and tourism development tax that may be levied under this act shall be three percent (3%) of the gross receipts derived from the rental of any room, lodging, or similar accommodation furnished by any hotel, motel, inn, tourist camp, condominium, cottage, campground, or other similar places within the county now subject to the three percent (3%) sales tax imposed by the State under G.S. 105-164.4(3). This tax is in addition to any local sales tax. This tax does not apply to gross receipts derived by the following entities from accommodations furnished by them:

- (1) religious organizations;
- (2) a business or person that offers to rent fewer than five units;

- (3) educational organizations;
- (4) any room or lodging rented to the same person for 90 or more continuous days;
- (5) summer camp; and
- (6) charitable, benevolent, and other nonprofit organizations.

Sec. 3. Administration of Tax. (a) The county shall administer a tax levied under this act. A tax levied under this act is due and payable to the county in monthly installments on or before the 15th day of the month following the month in which the tax accrues. Every person, firm, corporation, and association liable for the tax shall, on or before the 15th day of each month, prepare and render a return on a form prescribed by Carteret County. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied.

(b) Any person, firm, corporation, or association who fails or refuses to file the return required by this act shall pay a penalty of ten dollars (\$10.00) for each day's omission.

(c) In addition, in case of failure or refusal to file the return or pay the tax for a period of 30 days after the time required for filing the return or for paying the tax, there shall be an additional tax, as a penalty, of five percent (5%) of the tax due for each additional month or fraction thereof until the occupancy tax is paid.

(d) Any person who willfully attempts in any manner to evade the tax imposed by this act or who willfully fails to pay the tax or make and file a return shall, in addition to all other penalties provided by law, be guilty of a misdemeanor and shall be punishable by a fine not to exceed one thousand dollars (\$1,000), imprisonment not to exceed six months, or both.

Sec. 4. Collection of Tax. (a) Every operator of a business subject to the tax levied by this act shall, on and after the effective date of the levy of the tax, collect the tax. This tax shall be collected as part of the charge for the furnishing of any taxable accommodations. The tax shall be stated and charged separately from the sales records and shall be paid by the purchaser to the operator of the business as trustee for and on account of Carteret County. The tax levied pursuant to this act shall be added to the sales price and shall be passed on to the purchaser instead of being borne by the operator of the business. The county shall design, print, and furnish to all affected businesses in Carteret County the necessary forms for filing returns and instructions to ensure the collection of the tax.

(b) An operator of a business who collects the occupancy tax levied under this act may, if the tax is paid by the 15th of the month, deduct from the amount remitted by him to the county a discount of

three percent (3%) of the amount collected as reimbursement for the expense incurred in collecting the tax.

(c) A tax return filed with the county tax collector under this act is not a public record as defined by G.S. 132-1 and may not be disclosed except as required by law. A person who unlawfully discloses a tax return filed pursuant to this act is guilty of a misdemeanor and is punishable by a fine of not less than two hundred dollars (\$200.00) nor more than one thousand dollars (\$1,000), imprisonment, or both.

Sec. 5. Disposition of Taxes Collected. (a) Carteret County shall remit monthly the net proceeds of the occupancy tax to the Carteret County Tourism Development Authority. "Net proceeds" means gross proceeds less the cost to the county of administering and collecting the tax, not to exceed three percent (3%) of the gross proceeds of the tax.

(b) The County Tourism Development Authority may not use any of the occupancy tax revenue to construct offices or visitor centers. The County Tourism Development Authority shall use the occupancy tax revenue remitted to it only for the following purposes:

- (1) Direct advertising costs for visitor promotions, conventions, or tourism, including outdoor advertising, print media, broadcast media, and brochures;
- (2) Marketing and promotions expenses, including test market programs, consultant fees, entertainment, housing expenses, travel expenses, and registration fees;
- (3) Other expenses that aid and encourage visitor promotions, conventions, or tourism, including support for museums and historical attractions and construction or lease of beach access areas with off-street parking facilities; and
- (4) Operation and promotion of a civic center, convention center, or public auditorium.

(c) The County Tourism Development Authority may contract with appropriate organizations or agencies to assist it in carrying out the above purposes. The County Tourism Development Authority may use no more than ten percent (10%) of the occupancy tax revenue for administration.

Sec. 6. Appointment; Duties of Tourism Development Authority. (a) When the board of county commissioners adopts a resolution levying a room occupancy tax pursuant to this act, it shall also adopt a resolution creating a County Tourism Development Authority, which shall be a public authority under Local Government Budget and Fiscal Control Act and shall be composed of the following members, a majority of whom shall be collectors of the occupancy tax:

- (1) One county commissioner appointed annually by the Board of County Commissioners of Carteret County.
- (2) Two individuals who have demonstrated an interest in convention and tourism development, appointed by the Carteret County Chamber of Commerce.
- (3) Two individuals who are owners, operators, or representatives of hotels, motels, condominiums, cottages, and campgrounds or other taxable tourist accommodations, appointed by the Crystal Coast Hotel and Motel Association.
- (4) Two individuals who are owners or operators of firms that collect the occupancy tax, appointed by the Carteret County Board of Realtors.
- (5) One individual appointed by the Board of County Commissioners who is not a member of or associated with the Board of County Commissioners, the Carteret County Chamber of Commerce, the Crystal Coast Hotel and Motel Association, or the Carteret County Board of Realtors. This individual must have shown an interest in tourism.

(b) All members of the Authority shall serve without compensation. Vacancies or expired terms in the Authority shall be filled by the original appointing group. Members appointed to fill unexpired terms shall serve for the remainder of the unexpired term for which they are appointed to fill.

Sec. 7. Terms. The county commissioner appointed under Section 6(a)(1) of this act shall serve for one year. The other members shall serve one three-year term, except the initial appointments shall be for the following terms:

- (1) The two individuals appointed by the Chamber of Commerce, one for a two-year term, one for a three-year term.
- (2) The two individuals appointed by the Crystal Coast Hotel and Motel Association, one for a two-year term and one for a three-year term.
- (3) The two individuals appointed by the Carteret County Board of Realtors, one for a one-year term and one for a two-year term.
- (4) The one at-large member shall serve a one-year term.

No member may serve two consecutive three-year terms. The members shall elect a chairman, who shall serve as chairman for a term of two years. The Authority shall meet at the call of the chairman and shall adopt rules of procedure to govern its meetings. The finance officer for Carteret County shall be the ex officio finance officer of the Authority. The Tourism Development Authority shall

report at the close of the fiscal year to the board of county commissioners on its receipts and expenditures for the preceding year.

Sec. 8. The Tourism Development Authority may contract with the Carteret County Chamber of Commerce, Carteret County, the Crystal Coast Hotel and Motel Association, or any person, firm, or agency to assist it in carrying out the purposes for which the tax proceeds levied under this act may be expended.

Sec. 9. Repeal of Levy. (a) The board of county commissioners may, by resolution, repeal the levy of the room occupancy tax in Carteret County, but no repeal of taxes levied under this act shall be effective until the end of the fiscal year in which the repeal resolution was adopted.

(b) No liability for any tax levied under this act that attached prior to the date on which a levy is repealed is discharged as a result of the repeal, and no right to a refund of tax that accrued prior to the effective date on which a levy is repealed may be denied as a result of the repeal.

Sec. 10. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 16th day of June, 1987.

S.B. 224

CHAPTER 376**AN ACT TO AUTHORIZE THE TOWN OF BEECH MOUNTAIN
TO LEVY A ROOM OCCUPANCY AND TOURISM
DEVELOPMENT TAX.**

The General Assembly of North Carolina enacts:

Section 1. Occupancy Tax. The Town Council of Beech Mountain may by resolution, after not less than 10 days' public notice and after a public hearing held pursuant thereto, levy a room occupancy and tourism development tax. Collection of the tax, and liability therefor shall begin and continue only on and after the first day of a calendar month set by the Town Council of Beech Mountain in the resolution levying the tax, which in no case may be earlier than the first day of the second succeeding calendar month after the date of adoption of the resolution.

The occupancy and tourism development tax that may be levied under this act shall be three percent (3%) of the gross receipts derived from the rental of any room, lodging, or similar accommodation in the Town of Beech Mountain that is subject to sales tax imposed by the State under G.S. 105-164.4(3). This tax is in addition to any local sales tax. The tax shall not apply to any room, lodging, or accommodations supplied to the same person for a period of 90 continuous days or more. The tax shall also not apply to sleeping

rooms or lodgings furnished by charitable, educational, or religious institutions or non-profit organizations.

Sec. 2. Administration of Tax. (a) The Town of Beech Mountain shall administer a tax levied under this act. A tax levied under this act is due and payable to the Town in monthly installments on or before the 15th day of the month following the month in which the tax accrues. Every person, firm, corporation, and association liable for the tax shall, on or before the 15th day of each month, prepare and render a return on a form prescribed by the Town. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied. A return filed with the Town under this act is not a public record as defined by G.S. 132-1 and may not be disclosed except as required by law.

(b) Any person, firm, corporation, or association who fails or refuses to file the return required by this act shall pay a penalty of ten dollars (\$10.00) for each day's omission.

In case of failure or refusal to file the return or pay the tax for a period of 30 days or more after the time required for filing the return or for paying the tax, there shall be an additional tax, as a penalty, of five percent (5%) of the total tax due, for each additional month or fraction thereof until the occupancy tax is paid.

Any person who willfully attempts in any manner to evade the occupancy tax levied under this act or to make a return and who willfully fails to pay the tax or make and file a return shall, in addition to all other penalties provided by law, be guilty of a misdemeanor and shall be punished by a fine not to exceed one thousand dollars (\$1,000) or by imprisonment not to exceed six months, or both. The Town Council may, for good cause shown, compromise or forgive the penalties imposed by this subsection.

(c) All persons, firms, corporations, and associations who rent either their own dwelling or dwellings or rooms for other persons are required to submit to the Town a list of all rental properties. This list shall include the owner's name, current address, and location of rental property. The list shall be submitted semi-annually on or before November 30 and May 30. Failure to file said listing shall subject the person, firm, corporation or association to a civil penalty.

Sec. 3. Collection of Tax. (a) Every operator of a business and every individual renting his or her own property subject to the tax levied pursuant to this act shall, on and after the effective date of the levy of the tax, collect the three percent (3%) room occupancy tax.

This tax shall be collected as part of the charge for the furnishing of any taxable accommodations. The tax shall be stated and charged separately from the sales records, and shall be paid by the purchaser to the operator of the business as trustee for and on account of the Town of Beech Mountain. It is the intent of this act that the room occupancy tax levied by the Town of Beech Mountain shall be added to the sales price and that the tax shall be passed on to the purchaser instead of being borne by the operator of the business. The Town shall design, print, and furnish to all appropriate businesses in the Town, the necessary forms for filing returns and instructions to ensure the full collection of the tax.

(b) Collection of the tax shall be the responsibility of the Beech Mountain Tax Administrator. In his/her discretion, the Tax Administrator may proceed against an operator whose occupancy tax is delinquent, employing all remedies for collection of tax as set out in G.S. 105-367, 105-368, 105-374, and 105-375. The Tax Administrator may audit occupancy tax reports as he/she deems necessary, utilizing information available to him/her in property tax matters.

Sec. 4. Discount for Payment of Taxes When Due. Every operator who pays the occupancy tax imposed by this Article shall be entitled to deduct from the amount of the tax for which he is liable and which he actually pays a discount of three percent (3%). Provided, however, the Tax Administrator may deny a taxpayer the benefits of this section for failure to pay the full tax when due as well as in cases of fraud, evasion, or failure to keep accurate and clear records as herein required. Provided, further, that in order to receive the discount the taxpayer must deduct the three percent (3%) at the time of making his monthly remittance of tax to the Town.

Sec. 5. Disposition of Taxes Collected. The Town of Beech Mountain shall retain from the gross proceeds of the tax collected an amount sufficient to pay its direct costs for administrative and collection expenses. "Net proceeds" shall mean gross proceeds less the direct costs for administrative and collection expenses not to exceed three percent (3%) of the amount collected. The net proceeds shall be distributed to the Town Council. The Town Council may expend the funds distributed to it pursuant to this section only to further the development of travel, tourism, conventions, and convention facilities in the Town.

Sec. 6. Repeal of Levy. The Beech Mountain Town Council may by resolution repeal the levy of the room occupancy tax in Beech Mountain, but no repeal of taxes levied under this part shall be effective until the end of the fiscal year in which the repeal resolution was adopted. No liability for any tax levied under this part that

attached prior to the date on which a levy is repealed shall be discharged as a result of the repeal, and no right to a refund of a tax that accrued prior to the effective date on which a levy is repealed shall be denied as a result of the repeal.

Sec. 7. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 16th day of June, 1987.

S.B. 338

CHAPTER 377

AN ACT TO AUTHORIZE HALIFAX COUNTY TO LEVY A ROOM OCCUPANCY AND TOURISM DEVELOPMENT TAX.

The General Assembly of North Carolina enacts:

Section 1. Occupancy tax. (a) Authorization and scope. The Halifax County Board of Commissioners may by resolution, after not less than 10 days' public notice and after a public hearing held pursuant thereto, levy a room occupancy tax of three percent (3%) of the gross receipts derived from the rental of any room, lodging, or similar accommodation furnished by a hotel, motel, inn, or similar place within the county that is subject to sales tax imposed by the State under G.S. 105-164.4(3). This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations.

(b) Collection. Every operator of a business subject to the tax levied under this act shall, on and after the effective date of the levy of the tax, collect the tax. This tax shall be collected as part of the charge for furnishing a taxable accommodation. The tax shall be stated and charged separately from the sales records, and shall be paid by the purchaser to the operator of the business as trustee for and on account of the county. The tax shall be added to the sales price and shall be passed on to the purchaser instead of being borne by the operator of the business. The county shall design, print, and furnish to all appropriate businesses and persons in the county the necessary forms for filing returns and instructions to ensure the full collection of the tax. An operator of a business who collects the occupancy tax levied under this act may deduct from the amount remitted to the county a discount of three percent (3%) of the amount collected.

(c) Administration. The county shall administer a tax levied under this act. A tax levied under this act is due and payable to the county finance officer in monthly installments on or before the 15th day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the 15th day of each month, prepare and render a return

on a form prescribed by the county. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied.

A return filed with the county finance officer under this act is not a public record as defined by G.S. 132-1 and may not be disclosed except as required by law.

(d) Penalties. A person, firm, corporation, or association who fails or refuses to file the return required by this act shall pay a penalty of ten dollars (\$10.00) for each day's omission. In case of failure or refusal to file the return or pay the tax for a period of 30 days after the time required for filing the return or for paying the tax, there shall be an additional tax, as a penalty, of five percent (5%) of the tax due for each additional month or fraction thereof until the tax is paid.

Any person who willfully attempts in any manner to evade a tax imposed under this act or who willfully fails to pay the tax or make and file a return shall, in addition to all other penalties provided by law, be guilty of a misdemeanor and shall be punishable by a fine not to exceed one thousand dollars (\$1,000), imprisonment not to exceed six months, or both. The Board of Commissioners may, for good cause shown, compromise or forgive the penalties imposed by this subsection.

(e) Distribution and use of tax revenue. Halifax County shall, on a quarterly basis, remit the net proceeds of the occupancy tax to the Halifax Tourism Development Authority. The Authority may spend funds remitted to it under this subsection only to promote travel and tourism in Halifax County, to sponsor tourist-oriented events and activities in Halifax County, and to finance tourist-related capital projects in Halifax County. As used in this subsection, "net proceeds" means gross proceeds less the cost to the county of administering and collecting the tax, as determined by the finance officer.

(f) Effective date of levy. A tax levied under this act shall become effective on the date specified in the resolution levying the tax. That date must be the first day of a calendar month, however, and may not be earlier than the first day of the second month after the date the resolution is adopted.

(g) Repeal. A tax levied under this act may be repealed by a resolution adopted by the Halifax County Board of Commissioners. Repeal of a tax levied under this act does not affect a liability for a tax that was attached before the effective date of the repeal, nor does it affect a right to a refund of a tax that accrued before the effective date of the repeal.

Sec. 2. Tourism Development Authority. (a) Appointment and membership. When the Board of Commissioners adopts a resolution levying a room occupancy tax under this act, it shall also adopt a resolution creating a county Tourism Development Authority, which shall be a public authority under the Local Government Budget and Fiscal Control Act. The resolution shall provide for the membership of the Authority including the members' qualifications and terms of office, and for the filling of vacancies on the Authority. The Board of Commissioners shall designate one member of the Authority as chair and shall determine the compensation, if any, to be paid to members of the Authority.

The Authority shall meet at the call of the chair and shall adopt rules of procedure to govern its meetings. The Finance Officer for Halifax County shall be the ex officio finance officer of the Authority.

(b) Duties. The Authority shall promote travel, tourism, and conventions in the county, sponsor tourist-related events and activities in the county, and finance tourist-related capital projects in the county.

(c) Reports. The Authority shall report quarterly and at the close of the fiscal year to the Board of County Commissioners on its receipts and expenditures for the preceding quarter and for the year in such detail as the Board may require.

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 16th day of June, 1987.

S.B. 394

CHAPTER 378

AN ACT TO PROVIDE FOR SPECIALIZED PLATES FOR PEARL HARBOR SURVIVORS.

The General Assembly of North Carolina enacts:

Section 1. Chapter 20 is amended by adding a new section to read:

" § 20-81.9. *Pearl Harbor survivor plates.*--(a) The Commissioner shall cause to be made a sufficient number of distinctive motor vehicle license plates for issuance to eligible persons who make application on a form designated by the Division and supply documentation that they were members of the U.S. Military Service and were present at the attack on Pearl Harbor and that are survivors of the attack on Pearl Harbor on December 7, 1941. Upon satisfactory proof of eligibility, the Commissioner shall collect fees in accordance with G.S. 20-81.3(b) and shall disburse fees in accordance with G.S. 20-81.3(c).

(b) The distinctive plates required by subsection (a) of this section shall bear the words 'Pearl Harbor Survivor' on the left side of the plate and shall also bear the insignia of the Pearl Harbor Survivors' Association. The license plates shall be numbered sequentially beginning with the number 001. These license plates shall be issued based on the date of receipt of the applications by the Division."

Sec. 2. This act shall become effective October 1, 1987.

In the General Assembly read three times and ratified this the 16th day of June, 1987.

S.B. 520

CHAPTER 379

AN ACT TO AUTHORIZE ROWAN COUNTY TO LEVY A ROOM OCCUPANCY AND TOURISM DEVELOPMENT TAX.

The General Assembly of North Carolina enacts:

Section 1. Occupancy tax. (a) Authorization and scope. The Rowan County Board of Commissioners may by resolution, after not less than 10 days' public notice and after a public hearing held pursuant thereto, levy a room occupancy tax of up to three percent (3%) of the gross receipts derived from the rental of any room, lodging, or similar accommodation furnished by a hotel, motel, inn, or similar place within the county that is subject to sales tax imposed by the State under G.S. 105-164.4(3). This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations.

(b) Collection. Every operator of a business subject to the tax levied under this section shall, on and after the effective date of the levy of the tax, collect the tax. This tax shall be collected as part of the charge for furnishing a taxable accommodation. The tax shall be stated and charged separately from the sales records, and shall be paid by the purchaser to the operator of the business as trustee for and on account of the county. The tax shall be added to the sales price and shall be passed on to the purchaser instead of being borne by the operator of the business. The county shall design, print, and furnish to all appropriate businesses and persons in the county the necessary forms for filing returns and instructions to ensure the full collection of the tax. An operator of a business who collects the occupancy tax levied under this section may deduct from the amount remitted to the county a discount of three percent (3%) of the amount collected.

(c) Administration. The county shall administer a tax levied under this section. A tax levied under this section is due and payable to the county finance officer in monthly installments on or before the 15th day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the 15th day of each month, prepare and render a return on a form prescribed by the county. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied.

A return filed with the county finance officer under this section is not a public record as defined by G.S. 132-1 and may not be disclosed except as required by law.

(d) Penalties. A person, firm, corporation, or association who fails or refuses to file the return required by this section shall pay a penalty of ten dollars (\$10.00) for each day's omission. In case of failure or refusal to file the return or pay the tax for a period of 30 days after the time required for filing the return or for paying the tax, there shall be an additional tax, as a penalty, of five percent (5%) of the tax due in addition to any other penalty, with an additional tax of five percent (5%) for each additional month or fraction thereof until the tax is paid.

Any person who willfully attempts in any manner to evade a tax imposed under this section or who willfully fails to pay the tax or make and file a return shall, in addition to all other penalties provided by law, be guilty of a misdemeanor and shall be punishable by a fine not to exceed one thousand dollars (\$1,000), imprisonment not to exceed six months, or both. The board of commissioners may, for good cause shown, compromise or forgive the penalties imposed by this subsection.

(e) Distribution and use of tax revenue. Rowan County shall, on a quarterly basis, remit the net proceeds of the occupancy tax to the Salisbury Chamber of Commerce. The chamber of commerce may, through its Tourism and Convention Committee, spend funds remitted to it under this subsection only to promote travel, tourism, and conventions in Rowan County and to sponsor tourist-oriented events and activities in Rowan County. The chamber of commerce may not spend any of the funds for construction, improvement, or maintenance of real property or for any other capital project. The Tourism and Convention Committee of the Salisbury Chamber of Commerce shall report quarterly and at the close of the fiscal year to the board of commissioners on its receipts and expenditures for the preceding quarter and for the year in such detail as the board may require.

As used in this subsection, "net proceeds" means gross proceeds less the cost to the county of administering and collecting the tax, as determined by the finance officer.

(f) Effective date of levy. A tax levied under this section shall become effective on the date specified in the resolution levying the tax. That date must be the first day of a calendar month, however, and may not be earlier than the first day of the second month after the date the resolution is adopted.

(g) Repeal. A tax levied under this section may be repealed by a resolution adopted by the Rowan County Board of Commissioners. Repeal of a tax levied under this section shall become effective on the first day of a month and may not become effective until the end of the fiscal year in which the repeal resolution was adopted. Repeal of a tax levied under this section does not affect a liability for a tax that was attached before the effective date of the repeal, nor does it affect a right to a refund of a tax that accrued before the effective date of the repeal.

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 16th of June, 1987.

S.B. 543

CHAPTER 380**AN ACT TO EXEMPT HIGHWAY CONSTRUCTION DIARIES FROM THE PUBLIC RECORDS STATUTE.**

The General Assembly of North Carolina enacts:

Section 1. Chapter 136 of the General Statutes is amended by adding a new section to read:

"§ 136-28.5. *Construction Diaries.*--Diaries kept in connection with construction or repair contracts entered into pursuant to G.S. 136-28.1 shall not be considered public records for the purposes of Chapter 132 of the General Statutes until the final estimate has been paid."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 16th day of June, 1987.

H.B. 588

CHAPTER 381**AN ACT TO CORRECT THE DEFINITION OF MOTOR VEHICLE DEALER IN CHAPTER 20 OF THE GENERAL STATUTES.**

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-286(11) reads as rewritten:

"(11) 'Motor vehicle dealer' and 'dealer' mean any person, firm, association, or corporation engaged in the business of selling, ~~soliciting, or advertising the sale of~~ motor vehicles, ~~and~~ or who holds or held at the time a cause of action under this Article accrued, a valid sales and service agreement, franchise or contract, granted by the manufacturer or distributor for the retail sale of said manufacturer's or distributor's new motor vehicles.

The term 'motor vehicle dealer' or 'dealer' does not include:

a. Receivers, trustees, administrators, executors, guardians, or other persons appointed by or acting under the judgment or order of any court; or

b. Public officers while performing their official duties; or

c. Persons disposing of motor vehicles acquired for their own use and actually so used, when the same shall have been so acquired and used in good faith and not for the purpose of avoiding the provisions of this Article; or

d. Persons, firms or corporations who shall sell motor vehicles as an incident to their principal business but who are not engaged primarily in the selling of motor vehicles. This category includes finance companies who shall sell repossessed motor vehicles and insurance companies who sell motor vehicles to which they have taken title as an incident of payments made under policies of insurance and who do not maintain a used car lot or building with one or more employed motor vehicle salesmen.

e. Persons, firms or corporations manufacturing, distributing or selling trailers and semitrailers weighing not more than 750 pounds and carrying not more than 1500 pound load.

f. A licensed real estate broker or salesman who sells a mobile home for the owner as an incident to the sale of land upon which the mobile home is located."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 16th day of June, 1987.

H.B. 664

CHAPTER 382

AN ACT TO PROVIDE FOR CONSERVATION, MANAGEMENT, ENHANCEMENT AND PROTECTION OF WILDLIFE SPECIES WHICH ARE ENDANGERED, THREATENED OR THE SUBJECT OF SPECIAL CONCERN.

The General Assembly of North Carolina enacts:

Section 1. A new Article is added to Chapter 113 of the General Statutes to read:

"Article 25.

"Endangered and Threatened Wildlife and
Wildlife Species of Special Concern.

"§ 113-331. *Definitions.*--All of the definitions contained in Article 12 of this Chapter 113 shall apply in this Article except to the extent that they may be herein modified for the purposes of this Article 25. As used in this Article, unless the context requires otherwise:

(1) 'Conserve' and 'conservation' mean the use and application of all methods, procedures and biological information for the purpose of bringing populations of native and once-native species of wildlife in balance with the optimum carrying capacity of their habitat, and maintaining such balance. These methods and procedures include all activities associated with scientific resource management such as research; census; law enforcement; habitat protection, acquisition, and enhancement; and restoration of species to unoccupied parts of historic range. With respect to endangered and threatened species, the terms mean the use of methods and procedures to bring the species to the point at which the measures provided are no longer necessary.

(2) 'Endangered species' means any native or once-native species of wild animal whose continued existence as a viable component of the State's fauna is determined by the Wildlife Resources Commission to be in jeopardy or any species of wild animal determined to be an 'endangered species' pursuant to the Endangered Species Act.

(3) 'Endangered Species Act' means the Endangered Species Act of 1973, Public Law 93-205 (87 Stat. 884), as it may be subsequently amended.

(4) 'Advisory Committee' means the North Carolina Nongame Wildlife Advisory Committee which is the advisory body of knowledgeable and representative citizens established by resolution of the Wildlife Resources Commission and charged to consider matters relating to nongame wildlife conservation and to advise the Commission in such matters.

(5) 'Protected animal' means a species of wild animal designated by the Wildlife Resources Commission as endangered, threatened, or of special concern.

(6) 'Protected animal list' means any one of the lists of North Carolina animal species that are endangered, threatened, or of special concern.

(7) 'Scientific council' means the group of scientists identified and assembled by the Advisory Committee to review the scientific evidence and to evaluate the status of wildlife species that are candidates for inclusion on a protected animal list.

(8) 'Special concern species' means any species of wild animal native or once-native to North Carolina which is determined by the Wildlife Resources Commission to require monitoring but which may be taken under regulations adopted under the provisions of this Article.

(9) 'Threatened species' means any native or once-native species of wild animal which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range, or one that is designated as a threatened species pursuant to the Endangered Species Act.

(10) 'Wild animal' means any native or once-native nongame amphibian, bird, crustacean, fish, mammal, mollusk or reptile not otherwise legally classified by statute or regulation such as game and fur bearing animals, except those inhabiting and depending upon coastal fishing waters, marine and estuarine resources, marine mammals found in coastal fishing waters, sea turtles found in coastal fishing waters, and those declared to be pests under the Structural Pest Control Act of North Carolina of 1955 or the North Carolina Pesticide Law of 1971. Nothing in this definition is intended to abrogate G.S. 113-132(a) or (c), confer jurisdiction upon the Wildlife Resources Commission as to any subject exclusively regulated by any other agency, or to authorize the Wildlife Resources Commission by its regulations to supersede any valid provision of law or regulation administered by any other agency.

"§ 113-332. *Declaration of policy.*--The General Assembly finds that the recreation and aesthetic needs of the people, the interests of science, the quality of the environment, and the best interests of the State require that endangered and threatened species of wild animals and wild animals of special concern be protected and conserved, that their numbers should be enhanced and that conservation techniques be developed for them; however, nothing in this Article shall be construed to limit the rights of a landholder in the management of his lands for agriculture, forestry, development or any other lawful purpose without his consent. The North Carolina Zoological Park is not subject to the provisions of this Article.

"§ 113-333. *Powers and duties of the Commission.*--In the administration of this Article, the Wildlife Resources Commission shall have the following powers and duties:

(1) To adopt and publish an endangered species list, a threatened species list, and a list of species of special concern, as provided for in G.S. 113-334, identifying each entry by its scientific and common name;

(2) To reconsider and revise the lists from time to time in response to public proposals or as the Commission deems necessary;

(3) To coordinate development and implementation of conservation programs for endangered and threatened species of wild animals and for species of special concern;

(4) To adopt regulations necessary to implement conservation programs for endangered, threatened, and special concern species and to limit, regulate, or prevent the taking, collection, or sale of protected animals;

(5) To conduct investigations to determine whether a wild animal should be on a protected animal list and to determine the requirements for survival of resident wild animal species.

" § 113-334. *Criteria and procedures for placing animals on protected animal lists.*--(a) All native or resident wild animals which are on the federal lists of endangered or threatened species pursuant to the Endangered Species Act have the same status on the North Carolina protected animals lists.

(b) The Advisory Committee, after considering a report on the status of a candidate species from the Scientific Council, may by resolution propose to the Wildlife Resources Commission that a species of wild animal be added to or removed from a protected animal list.

(c) If the Commission, with the advice of the Advisory Committee, finds there is probably merit in the proposal, it shall examine relevant scientific and economic data and factual information necessary to determine:

- (1) Whether any other state or federal agency or private entity is taking steps to protect the wild animal which is the subject of the proposal;
- (2) Whether there is present or threatened destruction, modification, or curtailment of its habitat;
- (3) If there is over-utilization for commercial, recreational, scientific, or educational purposes;
- (4) Whether there is critical population depletion from disease, predation, or other mortality factors;
- (5) Whether alternative regulatory mechanisms exist; and
- (6) The existence of other man-made factors affecting continued viability of the animal in North Carolina.

(d) The Commission, with the advice of the Advisory Committee, shall tentatively determine whether any regulatory action is warranted with regard to the proposal and, if so, the specific regulatory action to be proposed by it. Notice of its proposed rulemaking shall be

published in the North Carolina Register and the subsequent proceedings shall conform with the Administrative Procedure Act.

" § 113-335. *North Carolina Nongame Wildlife Advisory Committee.*--The North Carolina Nongame Wildlife Advisory Committee is created subject to constitution, organization, and function as determined appropriate and advisable by resolution of the Wildlife Resources Commission. The Advisory Committee is to be comprised of knowledgeable and representative citizens of North Carolina whose responsibility shall be to advise the Commission on matters related to conservation of nongame wildlife including creation of protected animal lists and development of conservation programs for endangered, threatened, and special concern species.

" § 113-336. *Powers and duties of the Advisory Committee.*--The Advisory Committee shall have the following powers and duties:

(1) To gather and provide information and data and advise the Wildlife Resources Commission with respect to all aspects of the biology and ecology of endangered, threatened, and special concern species;

(2) To investigate and make recommendations to the Commission as to the status of endangered, threatened, and special concern species;

(3) To identify and assemble experts from the disciplines of ornithology, mammalogy, herpetology, ichthyology, taxonomy, ecology and other fields as necessary to serve as the Scientific Council and to charge the Scientific Council to review the scientific evidence, to evaluate the status of candidate species, and to report back their findings with recommendations;

(4) To develop and present to the Commission management and conservation practices for preserving endangered, threatened, and special concern species;

(5) To recommend critical habitat areas for protection or acquisition;

(6) To advise the Commission on matters submitted to it by the Commission which involve technical zoological questions or the development of pertinent regulations, and to make any recommendations as deemed by the Advisory Committee to be worthy of the Commission's attention.

" § 113-337. *Unlawful acts; penalties.*--(a) It is unlawful:

(1) To take, possess, transport, sell, barter, trade, exchange, export, or offer for sale, barter, trade, exchange or export, or give away for any purpose including advertising or other

promotional purpose any animal on a protected wild animal list, except as authorized according to the regulations of the Commission, including those promulgated pursuant to G.S. 113-333(1);

- (2) To perform any act specifically prohibited by the regulations of the Commission promulgated pursuant to its authority under G.S. 113-333.

(b) Each person convicted of violating the provisions of this Article shall in addition to any other penalty prescribed in the discretion of the court be fined not less than one hundred dollars (\$100.00) upon the first conviction, and not less than five hundred dollars (\$500.00) upon any subsequent conviction."

Sec. 2. This act shall become effective on July 1, 1987; provided, however, G.S. 113-337 shall not apply to acts committed prior to October 1, 1987.

In the General Assembly read three times and ratified this the 16th day of June, 1987.

H.B. 724

CHAPTER 383**AN ACT TO AUTHORIZE ESTABLISHMENT OF COMMUNITY COLLEGE SYSTEM FOUNDATIONS.**

The General Assembly of North Carolina enacts:

Section 1. Chapter 115D is amended by adding a new section as follows:

"§ 115D-7. *Establishment of private, nonprofit corporations.*--The State Board of Community Colleges shall encourage the establishment of private, nonprofit corporations to support the community college system. The President of the Department of Community Colleges with the approval of the State Board of Community Colleges, may assign employees to assist with the establishment and operation of such nonprofit corporation and may make available to the corporation office space, equipment, supplies and other related resources; provided, the sole purpose of the corporation is to support the community college system.

The board of directors of each private, nonprofit corporation shall secure and pay for the services of the State Auditor's Office or employ a certified public accountant to conduct an audit of the financial accounts of the corporation. The board of directors shall transmit to the State Board of Community Colleges a copy of the annual financial audit report of the private nonprofit corporation."

Sec. 2. G.S. 115D-20 is amended by adding a new subdivision to read:

"(9) To encourage the establishment of private, nonprofit corporations to support the institution. The president, with approval of the board of trustees, may assign employees to assist with the establishment and operation of such corporation and may make available to the corporation office space, equipment, supplies and other related resources; provided, the sole purpose of the corporation is to support the institution. The board of directors of each private, nonprofit corporation shall secure and pay for the services of the State Auditor's Office or employ a certified public accountant to conduct an annual audit of the financial accounts of the corporation. The board of directors shall transmit to the board of trustees a copy of the annual financial audit report of the private nonprofit corporation."

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 16th day of June, 1987.

H.B. 803

CHAPTER 384

AN ACT TO ALLOW COURT REPORTERS TO TRANSCRIBE COURT RECORDS ELECTRONICALLY RECORDED BY OTHERS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 7A-95(c) is amended by deleting the last six words of the first sentence and substituting the following:

"which may be transcribed, as required, by any person designated by the Administrative Office of the Courts".

Sec. 2. G.S. 7A-198(c) is amended by deleting the last six words in the first sentence and substituting the following:

"which may be transcribed, as required, by any person designated by the Administrative Office of the Courts".

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 16th day of June, 1987.

H.B. 931

CHAPTER 385

AN ACT TO PROVIDE REMEDIES FOR CONSUMERS OF NEW MOTOR VEHICLES THAT DO NOT CONFORM TO EXPRESS WARRANTIES.

The General Assembly of North Carolina enacts:

Section 1. Chapter 20 of the General Statutes is amended by adding a new Article after Article 15 to read:

"ARTICLE 15A.

"New Motor Vehicles Warranties Act.

"§ 20-351. *Purpose.*--This Article shall provide State and private remedies against motor vehicle manufacturers for persons injured by new motor vehicles failing to conform to express warranties.

"§ 20-351.1. *Definitions.*--As used in this Article:

(1) 'Consumer' means the purchaser, other than for purposes of resale, or lessee from a commercial lender, lessor, or from a manufacturer or dealer, of a motor vehicle, and any other person entitled by the terms of an express warranty to enforce the obligations of that warranty.

(2) 'Manufacturer' means any person or corporation, resident or nonresident, who manufactures or assembles or imports or distributes new motor vehicles which are sold in the State of North Carolina.

(3) 'Motor vehicle' includes a motor vehicle as defined in G.S. 20-4.01 which is sold in this State, but does not include 'house trailer' as defined in G.S. 20-4.01 or any motor vehicle with a gross vehicle weight of 10,000 pounds or more.

"§ 20-351.2 *Require repairs.*--Express warranties for a new motor vehicle shall remain in effect at least one year or 12,000 miles. If a new motor vehicle does not conform to all applicable express warranties for a period of one year, or the term of the express warranties, whichever is greater, following the date of original delivery of the motor vehicle to the consumer, and the consumer reports the nonconformity to the manufacturer, its agent, or its authorized dealer during such period, the manufacturer shall make, or arrange to have made, repairs necessary to conform the vehicle to the express warranties, whether or not these repairs are made after the expiration of the applicable warranty period.

"§ 20-351.3. *Replacement or Refund.*--If the manufacturer is unable, after a reasonable number of attempts, to conform the motor vehicle to any express warranty by repairing or correcting, or arranging for the repair or correction of, any defect or condition or series of defects or conditions which substantially impair the value of the motor vehicle to the consumer, and which occurred no later than 24 months or 24,000 miles following original delivery of the vehicle, the manufacturer shall, at the option of the consumer, replace the vehicle with a comparable new motor vehicle or accept return of the vehicle from the consumer and refund to the consumer the following:

(1) the full contract price including, but not limited to, charges for undercoating, dealer preparation and transportation, and installed options, plus the non-refundable portions of extended warranties and

service contracts;

(2) all collateral charges, including but not limited to, sales tax, license and registration fees, and similar government charges;

(3) all finance charges incurred by the consumer after he first reports the nonconformity to the manufacturer, its agent, or its authorized dealer; and

(4) any incidental damages and monetary consequential damages, less a reasonable allowance for the consumer's use of the vehicle. Refunds shall be made to the consumer, and any lienholders as their interests may appear. A reasonable allowance for use is that amount directly attributable to use by the consumer prior to his first report of the nonconformity to the manufacturer, its agent, or its authorized dealer, and during any subsequent period when the vehicle is not out of service because of repair. 'Reasonable allowance' is presumed to be the cash price of the vehicle multiplied by a fraction having as its denominator 100,000 miles and its numerator the number of miles on the vehicle attributed to the consumer.

" § 20-351.4. *Affirmative defenses.*--It is an affirmative defense to any claim under this Article that an alleged nonconformity or series of nonconformities are the result of abuse, neglect, odometer tampering by the consumer or unauthorized modifications or alterations of a motor vehicle.

" § 20-351.5. *Presumption.*--(a) It is presumed that a reasonable number of attempts have been undertaken to conform a motor vehicle to the applicable express warranties if:

(1) the same nonconformity has been presented for repair to the manufacturer, its agent, or its authorized dealer four or more times but the same nonconformity continues to exist; or

(2) the vehicle was out of service to the consumer during or while awaiting repair of the nonconformity or a series of nonconformities for a cumulative total of 20 or more business days during any 12-month period of the warranty,

provided that the consumer has notified the manufacturer directly in writing of the existence of the nonconformity or series of nonconformities and allowed the manufacturer a reasonable period, not to exceed 15 calendar days, in which to correct the nonconformity or series of nonconformities. The manufacturer must clearly and conspicuously disclose to the consumer in the warranty or owners manual that written notification of a nonconformity is required before a consumer may be eligible for a refund or replacement of the vehicle and the manufacturer shall include in the warranty or owners manual the name and address where the written notification may be sent.

Provided, further, that notice to the manufacturer shall not be required if the manufacturer fails to make the disclosures provided herein.

(b) The consumer may prove that a defect or condition substantially impairs the value of the motor vehicle to the consumer in a manner other than that set forth in subsection (a) of this section.

(c) The term of an express warranty, the one-year period, and the 20-day period shall be extended by any period of time during which repair services are not available to the consumer because of war, strike, or natural disaster.

" § 20-351.6. *Civil action by the Attorney General.*--Whenever, in his opinion, the interests of the public require it, it shall be the duty of the Attorney General upon his ascertaining that any of the provisions of this Article have been violated by the manufacturer to bring a civil action in the name of the State, or any officer or department thereof as provided by law, or in the name of the State on relation of the Attorney General.

" § 20-351.7. *Civil action by the consumer.*--A consumer injured by reason of any violation of the provisions of this Article may bring a civil action against the manufacturer; provided, however, the consumer has given the manufacturer written notice of his intent to bring an action against the manufacturer at least 10 days prior to filing such suit. Nothing in this section shall prevent a manufacturer from requiring a consumer to utilize an informal settlement procedure prior to litigation if that procedure substantially complies in design and operation with the Magnuson-Moss Warranty Act, 15 USC § 2301 *et seq.*, and regulations promulgated thereunder, and that requirement is written clearly and conspicuously, in the written warranty and any warranty instructions provided to the consumer.

" § 20-351.8. *Remedies.*--In any action brought under this Article, the court may grant as relief:

(1) a permanent or temporary injunction or other equitable relief as the court deems just;

(2) monetary damages to the injured consumer in the amount fixed by the verdict. Such damages shall be trebled upon a finding that the manufacturer unreasonably refused to comply with G.S. 20-351.2 or G.S. 20-351.3. The jury may consider as damages all items listed for refund under G.S. 20-351.3;

(3) a reasonable attorney's fee for the attorney of the prevailing party, payable by the losing party, upon a finding by the court that:

- a. the manufacturer unreasonably failed or refused to fully resolve the matter which constitutes the basis of such action; or
- b. the party instituting the action knew, or should have known, the action was frivolous and malicious.

"§ 20-351.9. *Dealership liability.*--No authorized dealer shall be held liable by the manufacturer for any refunds or vehicle replacements in the absence of evidence indicating that dealership repairs have been carried out in a manner substantially inconsistent with the manufacturers' instructions. This act does not create any cause of action by a consumer against an authorized dealer.

"§ 20-351.10. *Preservation of other remedies.*--This Article does not limit the rights or remedies which are otherwise available to a consumer under any other law."

Sec. 2. This act shall become effective October 1, 1987.

In the General Assembly read three times and ratified this the 16th day of June, 1987.

H.B. 1100

CHAPTER 386

AN ACT TO ALLOW SMALL BUSINESSES AND OTHERS WHO REPAIR PERSONAL PROPERTY, OTHER THAN MOTOR VEHICLES, TO DISPOSE OF CERTAIN UNCLAIMED PROPERTY.

The General Assembly of North Carolina enacts:

Section 1. Article 13 of Chapter 66 of the General Statutes is amended by adding at the end a new section to read:

"§ 66-67.1. *Disposal by repair businesses of certain unclaimed property.*--(a) Disposal Authorized. Notwithstanding the provisions of Article 1 of Chapter 44A of the General Statutes, a person who repairs, alters, treats, or improves personal property in the ordinary course of his business pursuant to an express or implied contract with an owner or legal possessor of the personal property may, upon compliance with the notice requirement of subsection (b), dispose of any personal property of a value of five hundred dollars (\$500.00) or less, other than a motor vehicle, that has not been claimed by the owner or legal possessor for a period of sixty days or more after his receipt of written notice that the property is ready to be claimed.

(b) Notice Requirement. The repair business shall, at the time the property is surrendered, have a written notice of dimensions of not less than eight and one-half by eleven inches prominently displayed in a conspicuous place in the office or shop where the property was

surrendered containing the following message: 'NOT RESPONSIBLE FOR GOODS LEFT ON HAND FOR MORE THAN 60 DAYS'. When the property has been repaired or otherwise processed, the repair business shall notify the owner or legal possessor of the property, by certified mail with return receipt requested, that the property is ready to be claimed.

(c) Liability. A person who disposes of property in accordance with this section is not liable for damages to the owner of the property disposed of.

(d) Definitions. As used in this section, the terms 'legal possessor' and 'owner' have the meanings provided in G.S. 44A-1."

Sec. 2. This act shall become effective July 1, 1987, and applies to property surrendered on or after that date.

In the General Assembly read three times and ratified this the 16th day of June, 1987.

H.B. 1101

CHAPTER 387**AN ACT TO REGULATE GOING OUT OF BUSINESS AND DISTRESS SALES.**

The General Assembly of North Carolina enacts:

Section 1. G.S. 66-77 reads as rewritten:

"§ 66-77. *License required; contents of applications; inventory required; fees; bond; extension of licenses; records; false statements.*--(a) No person shall advertise or offer for sale a stock of goods, wares or merchandise under the description of closing-out sale, or a sale of goods, wares or merchandise damaged by fire, smoke, water or otherwise, or a distress sale unless he shall have obtained a license to conduct such sale from the clerk of the city or town in which he proposes to conduct such a sale or from the officer designated by the Board of County Commissioners if the sale is conducted in an unincorporated area. The applicant for such a license shall make to such clerk an application therefor, in writing and under oath at least seven days prior to the opening date of sale, showing all the facts relating to the reasons and character of such sale, including the opening and terminating dates of the proposed sale, the opening and terminating dates of any previous distress sale or closing-out sale held by the applicant within that county during the preceding 12 months, a complete inventory of the goods, wares or merchandise actually on hand in the place whereat such sale is to be conducted, and all details necessary to locate exactly and identify fully the goods, wares or merchandise to be sold. Provided, the seller in a distress sale need not file an inventory.

(b) If such clerk shall be satisfied from said application that the proposed sale is of the character which the applicant desires to advertise and conduct, the clerk shall issue a license, upon the payment of a fee of fifty dollars (\$50.00) therefor, together with a bond, payable to the city or town or county in the penal sum of five hundred dollars (\$500.00), conditioned upon compliance with this Article, to the applicant authorizing him to advertise and conduct a sale of the particular kind mentioned in the application; ~~provided, however, that . the~~ The license fee provided for herein shall be good for a period of 30 days from its date, and if the applicant shall not complete said sale within said 30-day period then the applicant shall make application to such clerk for a license for a new permit, which shall be good for an additional period of 30 days, and shall pay therefor the sum of fifty dollars (\$50.00); and provided further , and a second extension period of 30 days may be similarly applied for and granted by the clerk upon payment of an additional fee of fifty dollars (\$50.00) and upon the clerk being satisfied that the applicant is holding a bona fide sale of the kind contemplated by this Article and is acting in a bona fide manner; provided, however, that the clerk may not grant an extension period as provided in this subsection if (i) the applicant conducted a distress sale immediately preceding the current sale for which the extension is applied for and (ii) the period of the extension applied for, when added to the period of the preceding sale and the period of the current sale, will exceed 120 days. No additional bond shall be required in the event of one or more extensions as herein provided for. Any merchant who shall have been conducting a business in the same location where the sale is to be held for a period of not less than one year, prior to the date of holding such sale, or any merchant who shall have been conducting a business in one location for such period but who shall, by reason of the building being untenable or by reason of the fact that said merchant shall have no existing lease or ownership of the building and shall be forced to hold such sale at another location, shall be exempted from the payment of the fees and the filing of the bond herein provided for.

(c) Every city or town or county to whom application is made shall endorse upon such application the date of its filing, and shall preserve the same as a record of his office, and shall make an abstract of the facts set forth in such application, and shall indicate whether the license was granted or refused.

(d) Any person making a false statement in the application provided for in this section shall, upon conviction, be deemed guilty of perjury."

Sec. 2. G.S. 66-80 reads as rewritten:

" § 66-80. *Continuation of sale or business beyond termination date.*--

No person shall conduct a closing-out sale or a sale of goods, wares or merchandise damaged by fire, smoke, water or otherwise or a distress sale beyond the termination date specified for such sale, except as otherwise provided for in subsection (b) of G.S. 66-77; nor shall any person, upon conclusion of such sale, continue that business which had been represented as closing out or going out of business under the same name, or under a different name, at the same location, or elsewhere in the same city or town where the inventory for such sale was filed for a period of 12 months; nor shall any person, upon conclusion of such sale, continue business contrary to the designation of such sale. As used in this section, the term 'person' includes individuals, partnerships, corporations, and other business entities. If a business entity that is prohibited from continuing a business under this section reformulates itself as a new entity or as an individual, whether by sale, merger, acquisition, bankruptcy, dissolution, or any other transaction, for the purpose of continuing the business, the successor entity or individual shall be considered the same person as the original entity for the purpose of this section. If an individual who is prohibited from continuing a business under this section forms a new business entity to continue the business, that entity shall be considered the same person as the individual for the purpose of this section."

Sec. 3. This act shall become effective July 1, 1987.

In the General Assembly read three times and ratified this the 16th day of June, 1987.

H.B. 1189

CHAPTER 388

AN ACT TO REWRITE THE CRIMINAL OFFENSE OF FORGERY OF TRANSCRIPTS AND DIPLOMAS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 14-122.1 is rewritten to read:

" § 14-122.1. *Falsifying documents issued by a secondary school, postsecondary educational institution, or governmental agency.*--(a) It shall be unlawful for any person knowingly and willfully:

- (1) to make falsely or alter falsely, or to procure to be made falsely or altered falsely, or to aid or assist in making falsely or altering falsely, a diploma, certificate, license, or transcript signifying merit or achievement in an educational

program issued by a secondary school, a postsecondary educational institution, or a governmental agency;

- (2) to sell, give, buy, or obtain, or to procure to be sold, given, bought, or obtained, or to aid or assist in selling, giving, buying, or obtaining, a diploma, certificate, license, or transcript, which he knows is false, signifying merit or achievement in an educational program issued by a secondary school, a postsecondary educational institution, or a governmental agency;
- (3) to use, offer, or present as genuine a falsely made or falsely altered diploma, certificate, license, or transcript signifying merit or achievement in an educational program issued by a secondary school, a postsecondary educational institution, or a governmental agency, which he knows is false; or
- (4) to make a false written representation of fact that he has received a degree or other certification signifying merit, achievement, or completion of an educational program involving study, experience, or testing from a secondary school, a postsecondary educational institution or governmental agency in an application for:
 - (a) employment;
 - (b) admission to an educational program;
 - (c) award; or
 - (d) for the purpose of inducing another to issue a diploma, certificate, license, or transcript signifying merit or achievement in an educational program of a secondary school, postsecondary educational institution, or a governmental agency.

(b) As used in this section, 'postsecondary educational institution' means a technical college, community college, junior college, college, or university. As used in this section, 'governmental agency' means any agency of a State or local government or of the federal government. As used in this section, 'secondary school' means grades 9 through 12.

(c) Any person who violates a provision of this section shall be guilty of a crime and shall be punished as provided in G.S. 14-3."

Sec. 2. This act shall become effective October 1, 1987, and applies to offenses occurring on or after that date.

In the General Assembly read three times and ratified this the 16th day of June, 1987.

H.B. 1269

CHAPTER 389

AN ACT TO ALLOW BOARDS OF EDUCATION TO ELECT
SUPERINTENDENTS IN MONTHS OTHER THAN APRIL.

The General Assembly of North Carolina enacts:

Section 1. G.S. 115C-271 is amended in the first sentence of the first paragraph by deleting the words "during the month of April" and substituting "not later than April 30".

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 16th day of June, 1987.

S.B. 53

CHAPTER 390

AN ACT TO AUTHORIZE THE GREENE COUNTY COMMITTEE
OF 100 TO USE PREVIOUSLY APPROPRIATED FUNDS TO
CONSTRUCT A BUILDING FOR INDUSTRIAL
DEVELOPMENT RATHER THAN FOR MASS GATHERINGS.

The General Assembly of North Carolina enacts:

Section 1. Section 8 of Chapter 1014, Session Laws of 1985, is amended under the subheading "S1243 GREENE COMMITTEE OF 100 FUNDS" by deleting "community gatherings", and substituting "industrial development".

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 17th day of June, 1987.

S.B. 479

CHAPTER 391

AN ACT TO PERMIT THE ISSUANCE OF BROWN-BAGGING
PERMITS TO VETERANS ORGANIZATIONS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 18B-1000 is amended by adding a new subdivision to read:

"(8) Congressionally chartered veterans organizations. An establishment that is organized as a federally chartered, nonprofit veterans organization, and is operated solely for patriotic or fraternal purposes."

Sec. 2. G.S. 18B-1001(7) reads as rewritten:

"(7) Brown-bagging Permit. A brown-bagging permit authorizes each individual patron of ~~a business~~ an establishment, with the permission of the permittee, to bring up to four liters of fortified wine or spirituous liquor, or four liters of the two combined, onto the premises and to consume those alcoholic beverages on the premises. The permit may be issued for any of the following:

- a. Restaurants;
- b. Hotels;
- c. Private clubs;
- d. Community ~~theatres~~, theaters;
- e. Congressionally-chartered veterans organizations."

Sec. 3. This act shall become effective July 1, 1987.

In the General Assembly read three times and ratified this the 17th day of June, 1987.

S.B. 782

CHAPTER 392

AN ACT TO INCREASE THE ALLOWABLE AXLE WEIGHTS FOR CERTAIN VEHICLES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-118(b) reads as rewritten:

"(b) The following weight limitations shall apply to vehicles operating on the highways of the State:

(1) The single-axle weight of a vehicle or combination of vehicles shall not exceed 20,000 pounds.

(2) The tandem-axle weight of a vehicle or combination of vehicles shall not exceed ~~34,000~~ 38,000 pounds.

(3) The gross weight imposed upon the highway by any axle group of a vehicle or combination of vehicles shall not exceed the maximum weight given for the respective distance between the first and last axle of the group of axles measured longitudinally to the nearest foot as set forth in the following table:

| Distance Between Axles* | Maximum Weight in Pounds for any Group of Two or More Consecutive Axles Including all Tolerances | | | | | |
|-------------------------------|--|------------------|---------|---------|---------|---------|
| | 2 Axles | 3 Axles | 4 Axles | 5 Axles | 6 Axles | 7 Axles |
| 4 | 34000 | 38000 | | | | |
| 5 | 34000 | 38000 | | | | |
| 6 | 34000 | 38000 | | | | |
| 7 | 34000 | 38000 | | | | |
| 8 | 34000 | 34000 | | | | |

| | | | | |
|-------------|-------|-------|---------|-------|
| 8 or less | 38000 | 38000 | | |
| more than 8 | 38000 | 42000 | | |
| 9 | 39000 | 42500 | | |
| 10 | 40000 | 43500 | | |
| 11 | | 44000 | | |
| 12 | | 45000 | 50000 | |
| 13 | | 45500 | 50500 | |
| 14 | | 46500 | 51500 | |
| 15 | | 47000 | 52000 | |
| 16 | | 48000 | 52500 | 58000 |
| 17 | | 48500 | 53500 | 58500 |
| 18 | | 49500 | 54000 | 59000 |
| 19 | | 50000 | 54500 | 60000 |
| 20 | | 51000 | 55500 | 60500 |
| 21 | | 51500 | 56000 | 61000 |
| 22 | | 52500 | 56500 | 61500 |
| 23 | | 53000 | 57500 | 62500 |
| 24 | | 54000 | 58000 | 63000 |
| 25 | | 54500 | 58500 | 63500 |
| 26 | | 55500 | 59500 | 64000 |
| 27 | | 56000 | 60000 | 65000 |
| 28 | | 57000 | 60500 | 65500 |
| 29 | | 57500 | 61500 | 66000 |
| 30 | | 58500 | 62000 | 66500 |
| 31 | | 59000 | 62500 | 67500 |
| 32 | | 60000 | 63500 | 68000 |
| 33 | | | 64000 | 68500 |
| 34 | | | 64500 | 69000 |
| 35 | | | 65500 | 70000 |
| 36 | | | 66000** | 70500 |
| 37 | | | 66500** | 71000 |
| 38 | | | 67500** | 72000 |
| 39 | | | 68000 | 72500 |
| 40 | | | 68500 | 73000 |
| 41 | | | 69500 | 73500 |
| 42 | | | 70000 | 74000 |
| 43 | | | 70500 | 75000 |
| 44 | | | 71500 | 75500 |
| 45 | | | 72000 | 76000 |
| 46 | | | 72500 | 76500 |
| 47 | | | 73500 | 77500 |
| 48 | | | 74000 | 78000 |
| 49 | | | 74500 | 78500 |
| 50 | | | 75500 | 79000 |

| | | |
|----|-------|-------|
| 51 | 76000 | 80000 |
| 52 | 76500 | |
| 53 | 77500 | |
| 54 | 78000 | |
| 55 | 78500 | |
| 56 | 79500 | |
| 57 | 80000 | |

*Distance in Feet Between the Extremes of any Group of Two or More Consecutive Axles.

**See exception in G.S. 20-118(c)(1).

(4) The Department of Transportation may establish light-traffic roads and further restrict the axle weight limit on such light-traffic roads lower than the statutory limits. The Department of Transportation shall have authority to designate any highway on the State Highway System, excluding routes designated by I, U.S. and N.C., as a light-traffic road when in the opinion of the Department of Transportation, such road is inadequate to carry and will be injuriously affected by vehicles using the said road carrying the maximum axle weight. All such roads so designated shall be conspicuously posted as light-traffic roads and the maximum axle weight authorized shall be displayed on proper signs erected thereon."

Sec. 2. G.S. 20-118(c)(2) reads as rewritten:

"(2) When a vehicle is operated in violation of G.S. 20-118(b)(1), 20-118(b)(2), or 20-118(b)(3), but the gross weight of the vehicle or combination of vehicles does not exceed that permitted by G.S. 20-118(b)(3), the owner of the vehicle shall be permitted to shift the load within the vehicle, without penalty, from one axle to another to comply with the weight limits in the following cases:

a. Where the single-axle load exceeds the statutory limits, but does not exceed 21,000 pounds.

b. Where the vehicle or combination of vehicles has tandem axles, but the tandem-axle weight does not exceed ~~36,000~~ 40,000 pounds."

Sec. 3. G.S. 20-118(j) is repealed.

Sec. 4. The table entitled "Maximum Weight in Pounds for any Group of Two or More Consecutive Axles Including all Tolerances" set out in G.S. 20-118(b)(3) is amended by placing "***" in the fourth column entitled "4 Axles" after the following numbers:

62000
62500
63500
64000
64500
65500.

Sec. 5. G.S. 20-118(c)(1) is amended by adding after the existing sentence, the following:

"Tank trailers, dump trailers, and ocean going transport containers on two consecutive sets of tandem axles may carry a gross weight of 34,000 pounds each without penalty provided the overall distance between the second and the fifth axles of such consecutive sets of tandem axles is 30 feet or more. The exception for tank trailers, dump trailers, and ocean transport containers shall expire August 31, 1988."

Sec. 6. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 18th day of June, 1987.

H.B. 127

CHAPTER 393

AN ACT TO REQUIRE DECLARATIONS OF INTENT AND
PETITIONS FOR WRITE-IN CANDIDATES, BUT EXEMPTING
MUNICIPAL AND NONPARTISAN ELECTIONS.

The General Assembly of North Carolina enacts:

Section 1. Chapter 163 of the General Statutes is amended by adding to Article 11 a new section to read:

"§ 163-123. *Declaration of intent and petitions for write-in candidates in partisan elections.*--(a) Procedure for qualifying as a write-in candidate. Any qualified voter who seeks to have write-in votes for him counted in a general election shall file a declaration of intent in accordance with subsection (b) of this section and petition(s) in accordance with subsection (c) of this section.

(b) Declaration of intent. The applicant for write-in candidacy shall file his declaration of intent at the same time and with the same board of elections as his petition, as set out in subsection (c) of this section. The declaration shall contain:

- (1) Applicant's name,
- (2) Applicant's residential address,
- (3) Declaration of applicant's intent to be a write-in candidate,
- (4) Title of the office sought,
- (5) Date of the election,
- (6) Date of the declaration,
- (7) Applicant's signature.

(c) Petitions for write-in candidacy. An applicant for write-in candidacy shall:

- (1) If the office is a statewide office, file written petitions with the State Board of Elections supporting his candidacy for a specified office. These petitions shall be filed on or before noon on the 90th day before the general election. They

shall be signed by 500 qualified voters of the State. Before being filed with the State Board of Elections, each petition shall be presented to the board of elections of the county in which the signatures were obtained. A petition presented to a county board of elections shall contain only names of voters registered in that county. The chairman of the county board of elections shall examine the names on the petition and place a check mark by the name of each signer who is qualified and registered to vote in his county. The chairman of the county board shall attach to the petition his signed certificate. On his certificate the chairman shall state that the signatures on the petition have been checked against the registration records and shall indicate the number of signers who are qualified and registered to vote in his county and eligible to vote for that office. The chairman shall return each petition, together with the certificate required in this section, to the person who presented it to him for checking. The chairman of the county board shall complete the verification within two weeks from the date the petition is presented. At the time of submitting the petition, a fee of five cents (5¢) shall be paid for each name appearing on the petition.

- (2) If the office is a district office comprising all or part of two or more counties, file written petitions with the State Board of Elections supporting his candidacy for a specified office. These petitions must be filed with the State Board of Elections on or before noon on the 90th day before the general election and must be signed by 250 qualified voters. Before being filed with the State Board of Elections, each petition shall be presented to the board of elections of the county in which the signatures were obtained. A petition presented to a county board of elections shall contain only names of voters registered in that county who are eligible to vote for that office. The chairman of the county board shall examine the names on the petition and the procedure for certification shall be the same as specified in subdivision (1).
- (3) If the office is a county office, or is a school administrative unit office elected on a partisan basis, or is a legislative district consisting of a single county or a portion of a county, file written petitions with the county board of elections supporting his candidacy for a specified office. A petition presented to a county board of elections shall contain only names of voters registered in that county.

These petitions must be filed on or before noon on the 90th day before the general election and must be signed by 100 qualified voters who are eligible to vote for the office, unless fewer than 5,000 persons are eligible to vote for the office as shown by the most recent records of the appropriate board of elections. If fewer than 5,000 persons are eligible to vote for the office, an applicant's petitions must be signed by not less than one percent (1%) of those registered voters. Before being filed with the county board of elections, each petition shall be presented to the county board of elections for examination. The chairman of the county board of elections shall examine the names on the petition and the procedure for certification shall be the same as specified in subdivision (1).

(d) Form of petition. Petitions requesting the qualification of a write-in candidate in a general election shall contain on the heading of each page of the petition in bold print or in capital letters the words: 'THE UNDERSIGNED REGISTERED VOTERS IN COUNTY HEREBY PETITION ON BEHALF OF AS A WRITE-IN CANDIDATE IN THE NEXT GENERAL ELECTION. THE UNDERSIGNED HEREBY PETITION THAT SUBJECT CANDIDATE BE PLACED ON THE LIST OF QUALIFIED WRITE-IN CANDIDATES WHOSE VOTES ARE TO BE COUNTED AND RECORDED IN ACCORDANCE WITH G.S. 163-123.'

(e) Defeated primary candidate. No person whose name appeared on the ballot in a primary election preliminary to the general election shall be eligible to have votes counted for him as a write-in candidate for the same office in that year.

(f) Counting and recording of votes. If a qualified voter has complied with the provisions of subsections (a), (b), and (c) and is not excluded by subsection (e), the board of elections with which petition has been filed shall count votes for him according to the procedures set out in G.S. 163-170(5), and the appropriate board of elections shall record those votes on the official abstract. Write-in votes for names other than those of qualified write-in candidates shall not be counted for any purpose and shall not be recorded on the abstract.

(g) Municipal and nonpartisan elections excluded. This section does not apply to municipal elections conducted under Subchapter IX of Chapter 163 of the General Statutes, and does not apply to nonpartisan elections."

Sec. 2. This act is effective upon ratification, and will expire two (2) years after date of ratification.

In the General Assembly read three times and ratified this the 17th day of June, 1987.

H.B. 376

CHAPTER 394

AN ACT TO MAKE THE DECISION OF SUPERIOR COURT BINDING WHEN IT AFFIRMS THE DECISION OF THE PERSONNEL COMMISSION AND TO REQUIRE THAT NOTICE BE GIVEN TO THE COUNTY WHEN A LOCAL EMPLOYEE FILES AN ACTION PURSUANT TO G.S. 126-37 AGAINST MOST LOCAL APPOINTING AUTHORITIES AND TO MAKE THAT ENSUING DECISION OF SUPERIOR COURT BINDING ON THE COUNTY.

The General Assembly of North Carolina enacts:

Section 1. G.S. 126-37 reads as rewritten:

"§ 126-37. *Personnel Director to investigate, hear and recommend settlement; Personnel Commission to hear or review findings and make binding decision.*--(a) The State Personnel Director or any other person or persons designated by the Commission shall investigate the disciplinary action or alleged discrimination which is appealed to the Commission. Appeals involving a disciplinary action, alleged discrimination, and any other contested case arising under this Chapter shall be conducted in the Office of Administrative Hearings as provided in Article 3 of Chapter 150B; provided that no grievance may be appealed unless the employee has complied with G.S. 126-34. The State Personnel Commission shall make a final decision in these cases as provided in G.S. 150B-36. The State Personnel Commission is hereby authorized to reinstate any employee to the position from which he has been removed, to order the employment, promotion, transfer, or salary adjustment of any individual to whom it has been wrongfully denied or to direct other suitable action to correct the abuse which may include the requirement of payment for any loss of salary which has resulted from the improperly discriminatory action of the appointing authority. The decisions of the State Personnel Commission shall be binding in appeals of local employees subject to this Chapter if the Commission finds that the employee has been subjected to discrimination prohibited by Article 6 of this Chapter or in any case where a binding decision is required by applicable federal standards. However, in all other local employee appeals, the decisions of the State Personnel Commission shall be advisory to the local appointing authority.

(b) An action brought in superior court by an employee who is dissatisfied with an advisory decision of the State Personnel Commission or with the action taken by the local appointing authority pursuant to the decision shall be heard upon the record and not as a trial de novo. In such an action brought by a local employee under this section, the defendant shall be the local appointing authority. If superior court affirms the decision of the Commission, the decision of superior court shall be binding on the local appointing authority.

(c) If the local appointing authority is other than a board of county commissioners, the employee must give the county notice of the appeal taken pursuant to subsection (a) of this section. Notice must be given to the county manager or the chairman of the board of county commissioners by certified mail within 15 days of the filing of the notice of appeal. The county may intervene in the appeal within 30 days of receipt of the notice. If the action is appealed to superior court the county may intervene in the superior court proceeding even if it has not intervened in the administrative proceeding. The decision of the superior court shall be binding on the county even if the county does not intervene."

Sec. 2. This act is effective upon ratification and applies to all pending proceedings; provided, local employees shall have 60 days from the effective date to give notice to the county as provided in subsection (c) of this section.

In the General Assembly read three times and ratified this the 17th day of June, 1987.

H.B. 793

CHAPTER 395

AN ACT TO REDEFINE THE RELATIONSHIP OF STATE PERSONNEL COMMISSION POLICIES AND COVERAGE BY SELECTED PORTIONS OF THE STATE PERSONNEL ACT TO TEACHING EMPLOYEES OF THE DEPARTMENTS OF HUMAN RESOURCES AND CORRECTION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 126-5(c3) is amended by rewriting the subsection to read as follows:

"Except as to the policies, rules, and plans established by the Commission pursuant to G.S. 126-4(5) and the provisions of Article 6 of this Chapter, the provisions of this Chapter shall not apply to: Teaching and related educational classes of employees of the Department of Correction, the Department of Human Resources, and any other State department, agency or institution, whose salaries shall be set in the same manner as set for corresponding public school

employees in accordance with Chapter 115C of the General Statutes."

Sec. 2. G.S. 115C-325 (p) is amended by rewriting the subsection to read as follows:

"Section Applicable to Certain Institutions. Notwithstanding any law or regulation to the contrary, this section shall apply to all persons employed in teaching and related educational classes in the schools and institutions of the Departments of Human Resources and Correction regardless of the age of the students."

Sec. 3. This act shall become effective July 1, 1987.

In the General Assembly read three times and ratified this the 17th day of June, 1987.

H.B. 929

CHAPTER 396

AN ACT TO AUTHORIZE A METROPOLITAN SEWERAGE DISTRICT TO REQUIRE CONNECTION TO THE METROPOLITAN SEWERAGE SYSTEM LINES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 162A-69(13) is amended by deleting "and" at the end of the subdivision.

Sec. 2. G.S. 162A-69(13a) is amended by deleting "." at the end of the subdivision and substituting ";".

Sec. 3. G.S. 162A-69 is amended by adding a subdivision after subdivision (13a) to read:

"(13b) To require the owners of improved property located within the district so as to be served by a sewer collection line owned or leased and operated by the district to connect their premises with the sewer line, and fix charges for these connections; and".

Sec. 4. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 17th day of June, 1987.

H.B. 1162

CHAPTER 397

AN ACT TO PROVIDE THAT A DEFENDANT'S REAL PROPERTY, PERSONAL PROPERTY, AND INCOME MAY BE ATTACHED TO OBTAIN RESTITUTION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 15A-1343(d) reads as rewritten:

"(d) Restitution as a Condition of Probation. -- As a condition of probation, a defendant may be required to make restitution or reparation to an aggrieved party or parties who shall be named by the

court for the damage or loss caused by the defendant arising out of the offense or offenses committed by the defendant. When restitution or reparation is a condition imposed, the court shall take into consideration the resources of the defendant, including all real and personal property owned by the defendant and the income derived from such property, his ability to earn, his obligation to support dependents, and such other matters as shall pertain to his ability to make restitution or reparation, but the court is not required to make findings of fact or conclusions of law on these matters when the sentence is imposed. The amount must be limited to that supported by the record, and the court may order partial restitution or reparation when it appears that the damage or loss caused by the offense or offenses is greater than that which the defendant is able to pay. An order providing for restitution or reparation shall in no way abridge the right of any aggrieved party to bring a civil action against the defendant for money damages arising out of the offense or offenses committed by the defendant, but any amount paid by the defendant under the terms of an order as provided herein shall be credited against any judgment rendered against the defendant in such civil action. As used herein, 'restitution' shall mean (i) compensation for damage or loss as could ordinarily be recovered by an aggrieved party in a civil action, and (ii) reimbursement to the State for the total amount of a judgment authorized by G.S. 7A-455(b). As used herein, 'reparation' shall include but not be limited to the performing of community services, volunteer work, or doing such other acts or things as shall aid the defendant in his rehabilitation. As used herein, 'aggrieved party' shall include individuals, firms, corporations, associations or other organizations, and government agencies, whether federal, State or local. Provided, that no government agency shall benefit by way of restitution except for particular damage or loss to it over and above its normal operating costs and except that the State may receive restitution for the total amount of a judgment authorized by G.S. 7A-455(b). A government agency may benefit by way of reparation even though the agency was not a party to the crime provided that when reparation is ordered, community service work shall be rendered only after approval has been granted by the owner or person in charge of the property or premises where the work will be done. Provided further, that no third party shall benefit by way of restitution or reparation as a result of the liability of that third party to pay indemnity to an aggrieved party for the damage or loss caused by the defendant, but the liability of a third party to pay indemnity to an aggrieved party or any payment of indemnity actually made by a third party to an aggrieved party does not prohibit or limit in any way the

power of the court to require the defendant to make complete and full restitution or reparation to the aggrieved party for the total amount of the damage or loss caused by the defendant. Restitution or reparation measures are ancillary remedies to promote rehabilitation of criminal offenders and to provide for compensation to victims of crime, and shall not be construed to be a fine or other punishment as provided for in the Constitution and laws of this State."

Sec. 2. G.S. 148-33.2(b) is amended by deleting the period at the end of the first sentence and adding the following: "and out of other resources of the defendant, including all real and personal property owned by the defendant and the income derived from such property."

Sec. 3. G.S. 148-33.2(c) is amended by deleting the period at the end of the first sentence and adding a new phrase to read: "and out of other resources of the defendant, including all real and personal property owned by the defendant, and income derived from such property."

Sec. 4. G.S. 148-57.1(b) is amended by inserting a new sentence between the first and second sentences to read: "When imposing restitution as a condition and setting up a payment schedule for the restitution, the Parole Commission shall take into consideration the resources of the defendant, including all real and personal property owned by the defendant and the income derived from such property, his ability to earn, and his obligation to support dependents."

Sec. 5. This act shall become effective October 1, 1987, and shall apply to all offenses committed on or after that date.

In the General Assembly read three times and ratified this the 17th day of June, 1987.

H.B. 1175

CHAPTER 398

AN ACT TO PROVIDE FOR AN INTERLOCUTORY APPEAL.

The General Assembly of North Carolina enacts:

Section 1. G.S. 15A-1432(d) is amended by deleting the period at the end of the subsection and substituting the following phrase: ", including by an interlocutory appeal if the defendant, or his attorney, certifies to the superior court judge who entered the order that the appeal is not taken for the purpose of delay and if the judge finds the cause is appropriately justiciable in the appellate division as an interlocutory matter."

Sec. 2. This act shall become effective October 1, 1987.

In the General Assembly read three times and ratified this the 17th day of June, 1987.

H.B. 1285

CHAPTER 399

AN ACT TO CLARIFY THE SPONSORING OF MEETINGS OF PROFESSIONAL ORGANIZATIONS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 133-32(d) is amended by adding the following new language immediately after the first sentence:

"This section is not intended to prevent any contractor, subcontractor, or supplier from making donations to professional organizations to defray meeting expenses where governmental employees are members of such professional organizations, nor is it intended to prevent governmental employees who are members of professional organizations from participation in all scheduled meeting functions available to all members of the professional organization attending the meeting."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 17th day of June, 1987.

S.B. 402

CHAPTER 400

AN ACT TO AUTHORIZE THE DEPARTMENT OF TRANSPORTATION TO NEGOTIATE CONTRACTS WITH UTILITY COMPANIES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 136-28.1 is amended by adding a new subsection to read:

"(i) The Department of Transportation may negotiate and enter into contracts with public utility companies for the lease, purchase, installation, and maintenance of generators for electricity for its ferry repair facilities."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 18th day of June, 1987.

S.B. 495

CHAPTER 401

AN ACT TO AMEND THE LAW REGARDING ASSISTANCE DOGS FOR THE HANDICAPPED.

The General Assembly of North Carolina enacts:

Section 1. G.S. 168-4.2 reads as rewritten:

" § 168-4.2. *May be accompanied by assistance dog.*--Every mobility impaired person, as defined in this section, visually impaired person, as broadly defined to include visual disability, or hearing impaired person, as defined in G.S. 8B-1(2), has the right to be accompanied by an assistance dog especially trained for the purpose of providing assistance to a person with the same impairing condition as the person wishing to be accompanied, in any of the places listed in G.S. 168-3, and has the right to keep the assistance dog on any premises the person leases, rents, or uses. The person qualifies for these rights upon the showing of a tag, issued by the ~~Division of Vocational Rehabilitation~~, Department of Human Resources, pursuant to G.S. 168-4.3, stamped 'NORTH CAROLINA ASSISTANCE DOG PERMANENT REGISTRATION' and stamped with a registration number, or upon a showing that the dog is being trained or has been trained as an assistance dog. An assistance dog accompanying may accompany a person in any of the places listed in G.S. 168-3 ~~shall be in a blaze orange harness, on a blaze orange leash, and but~~ may not occupy a seat in any of these places.

~~Any visually impaired person with a guide dog or any hearing impaired person with a hearing ear dog who was accompanied by a dog pursuant to G.S. 168-4, 168-4.1, 168-7, and 168-7.1, as they existed prior to October 1, 1985, continues to have the right to be accompanied by that animal as long as the person continues to meet the appropriate conditions prescribed in those provisions. If the person wishes to be accompanied by another dog, the provisions of G.S. 168-4.2 through G.S. 168-4.5 apply.~~

A mobility impaired person is a person with a physiological deficiency, regardless of its cause, nature, or extent, that renders the individual unable to move about without the aid of crutches, a wheelchair, or other form of support, or that limits the person's functional ability to ambulate, climb, descend, sit, rise, or perform any other related function."

Sec. 2. G.S. 168-4.3 reads as rewritten:

" § 168-4.3. *Training and registration of assistance dog.*--~~The Division of Vocational Rehabilitation~~, Department of Human Resources, shall ~~shall~~ adopt rules for the registration of assistance dogs and shall issue registrations to a visually impaired person, a hearing impaired person, or a mobility impaired person who makes an application for registration of a dog that serves as an assistance dog. ~~When applying, the person shall present certification that the dog has been trained as an assistance dog for a person with the applicant's particular impairing condition by the appropriate agency. The Division shall issue the person a permanent tag for the dog that does not need~~

~~to be renewed while that particular dog serves the person as an assistance dog. The tag shall be stamped with a registration number and with the words "NORTH CAROLINA ASSISTANCE DOG PERMANENT REGISTRATION". The rules adopted regarding registration shall require that the dog be trained as an assistance dog by an appropriate agency, and that the certification and registration be permanent for the particular dog and need not be renewed while that particular dog serves the person applying for registration as an assistance dog. No fee may be charged the person for the application, registration, tag, or duplicate tag issued replacement in the event the original is lost. The Department of Human Resources may, by rule, issue a certification or accept the certification issued by the appropriate training facilities."~~

Sec. 3. G.S. 168-4.5 reads as rewritten:

~~"§ 168-4.5. Penalty.--It is unlawful to use or be in possession of a dog wearing a blaze orange harness, on a blaze orange leash, with the intent to disguise the a dog as an assistance dog, or to deprive a visually impaired person, a hearing impaired person, or a mobility impaired person of any rights granted the person pursuant to G.S. 168-4.2 through G.S. 168-4.4, or of any rights or privileges granted the general public with respect to being accompanied by dogs, or to charge any fee for the use of the assistance dog. Violation of this section shall be a misdemeanor punishable by imprisonment of not more than 10 days and a fine of not more than two hundred dollars (\$200.00)."~~

Sec. 4. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 18th day of June, 1987.

S.B. 612

CHAPTER 402

AN ACT TO REPEAL THE LAWS RELATING TO TRADEMARKS OF MINERAL WATERS AND BEVERAGES.

The General Assembly of North Carolina enacts:

Section 1. Article 3 of Chapter 80 of the General Statutes is repealed.

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 18th day of June, 1987.

S.B. 618

CHAPTER 403

AN ACT TO AMEND THE CHARTER OF THE CITY OF SANFORD.

The General Assembly of North Carolina enacts:

Section 1. The Charter of the City of Sanford, as enacted by Chapter 650 of the Session Laws of 1967, and as amended by Chapter 541 of the Session Laws of 1971, is further amended as follows:

(1) Sec. 3.2 is amended by deleting from the end of the second sentence "in holding Mayor's Court and in all other respects".

(2) Subsection (c) of Section 3.3 is hereby rewritten to read as follows:

"Following each regular biennial election, the Mayor and Aldermen elected shall assume their offices on the date of the first regular meeting of the Board in December following the election."

(3) Section 3.5 is hereby rewritten to read as follows:

"The Board of Aldermen shall meet and organize for the transaction of business on the date of the first regular meeting of the Board in December following the election. Before entering upon their offices, the Mayor and each Alderman shall take, subscribe, and have entered upon the minutes of the Board the following oath of office: 'I, _____ do solemnly swear (or affirm) that I will support and maintain the Constitution and Laws of the United States and the Constitution and Laws of North Carolina not inconsistent therewith, and that I will faithfully discharge the duties of the office as _____, so help me, God.'"

(4) Section 3.6 is amended by deleting from the first sentence "twice" and substituting "once".

(5) Section 3.10 is amended by deleting the second sentence and replacing it with the following:

"All such ordinances shall be read at two separate regular meetings of the Board of Aldermen and a 'yea' and 'nay' vote shall be taken and recorded on the first and second readings."

(6) Section 4.1 is amended by deleting the first sentence and substituting the following:

"Regular City elections shall be held biennially on Tuesday after the first Monday in November."

(7) Section 6.2 is hereby rewritten to read:

"Sec. 6.2. City Clerk. The office of City Clerk shall be held by the City Manager. The office of Deputy City Clerk shall be held by the Finance Director and the Secretary to the City Manager."

(8) Section 6.3 is amended by deleting "Board of Aldermen" and substituting "City Manger".

(9) Section 7.1 is amended by deleting from the last sentence "Municipal Fiscal Control Act" and replacing it with "Local Government Finance Act".

(10) Section 8.2 is here repealed.

(11) Section 12.4 is hereby amended by deleting "Article 9, Chapter 160" and replacing it with "Article 10, Chapter 160A".

(12) Section 12.5 is amended by deleting "Article 9, Chapter 160" and replacing it with "Article 10, Chapter 160A".

Sec. 2. Except as herein amended or modified, the remaining provisions of Chapter 650 of the Session Laws of 1967, as amended by Chapter 541 of the Session Laws of 1971, shall remain in effect.

Sec. 3. All laws in conflict with this act are hereby repealed.

Sec. 4. This act shall become effective upon ratification.

In the General Assembly read three times and ratified this the 18th day of June, 1987.

S.B. 689

CHAPTER 404

AN ACT TO ALLOW THE SUPREME COURT TO DESIGNATE A COMMERCIAL PUBLICATION AS THE OFFICIAL REPORTS OF THE APPELLATE DIVISION, OR ALLOW A CONTRACT FOR PUBLICATION OF THOSE REPORTS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 7A-6 is amended by adding a new subsection to read:

"(b1) In addition to and as an alternative to the provisions for the publication and sale of the appellate division reports of subsection (a) and subsection (b) of this section, the Supreme Court may designate a commercial law publisher's reports and advance sheets of the opinions of the Supreme Court and the Court of Appeals as the Official Reports of the Appellate Division, or the Administrative Officer of the Courts, with the approval of the Supreme Court, may contract with a commercial law publisher or publishers to act as printer and vendor of the reports and advance sheets of the Supreme Court and the Court of Appeals upon such terms as the Supreme Court deems advisable after consultation with the Department of Administration."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 18th day of June, 1987.

H.B. 77

CHAPTER 405

AN ACT TO PROVIDE AN ALTERNATE PROCEDURE FOR CANCELLATION OF A DEED OF TRUST.

The General Assembly of North Carolina enacts:

Section 1. G.S. 45-37(a) is amended by adding a new subdivision to read:

"(5) By exhibition to the register of deeds of a notice of satisfaction of a deed of trust or other instrument which has been acknowledged by the trustee before an officer authorized to take acknowledgments. The notice of satisfaction shall be substantially in the form set out in G.S. 47-46.1. The notice of satisfaction shall recite the names of all parties to the original instrument, the amount of the obligation secured, the date of satisfaction of the obligation, and a reference by book and page number to the record of the instrument satisfied.

Upon exhibition of the notice of satisfaction and payment of the appropriate fee provided in G.S. 161-10, the register of deeds shall record the notice of satisfaction and cancel the deed of trust or other instrument by entry of satisfaction on the margin of the record or as provided in G.S. 45-37.2."

Sec. 2. Article 3 of Chapter 47 of the General Statutes is amended by adding a new section to read:

"§ 47-46.1. *Notice of satisfaction of deed of trust or other instrument.*--The form of a notice of satisfaction of a deed of trust or other instrument pursuant to G.S. 45-37(a)(5) shall be substantially as follows:

North Carolina, _____ County.

I, _____ (name of trustee), certify that the debt or other obligation in the amount of _____ secured by the (deed of trust) (other instrument) executed by _____ (grantor), _____ (trustee), and _____ (beneficiary), and recorded in _____ County at _____ (book and page) was satisfied on _____ (date of satisfaction).

(Signature of trustee)

I, _____ (name of officer taking acknowledgment), _____ (official title of person taking acknowledgment) certify that _____ (name of trustee) personally came before me this day and acknowledged the satisfaction of the provisions of the above-referenced (deed of trust) (other instrument).

Witness my hand and official seal this the _____ day of _____ (month), _____ (year).

(Signature of officer taking acknowledgment)

My commission expires _____ (Date of expiration of official's commission).

North Carolina, _____ County.

The foregoing notice of satisfaction (or annexed notice of satisfaction) of _____ (name of officer that took acknowledgment), _____ (official title of person that took acknowledgment), is certified to be correct.

This _____ (day) of _____ (month), _____ (year).

(Signature of Register of Deeds)".

Sec. 3. This act shall become effective 30 days after ratification.

In the General Assembly read three times and ratified this the 18th day of June, 1987.

H.B. 310

CHAPTER 406

AN ACT TO PERMIT LOCAL BOARDS OF EDUCATION TO GIVE NOTICE OF A DECISION ON PUPIL REASSIGNMENT BY REGISTERED OR CERTIFIED MAIL.

The General Assembly of North Carolina enacts:

Section 1. The third sentence and the last sentence of G.S. 115C-369 are amended by inserting after the word "registered" and before the word "mail" each time they appear the words "or certified".

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 18th day of June, 1987.

H.B. 498

CHAPTER 407

AN ACT TO AMEND THE DEFINITION OF HUMAN SERVICE TRANSPORTATION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 62-289.3(2) reads as rewritten:

"(2) 'Human service transportation' means motor vehicle transportation provided on a nonprofit basis by a human service

agency for the purpose of transporting clients or recipients in connection with programs sponsored by the agency. 'Human service transportation' shall also mean motor vehicle transportation provided by for-profit persons under exclusive contract with a human service agency for the transportation of clients or recipients, and such provider shall also qualify as a human service agency for the purpose of motor vehicle registration during the term of the contract. The motor vehicle may be owned, leased, borrowed, or contracted for use by or from the human service agency.'

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 18th day of June, 1987.

H.B. 559

CHAPTER 408

AN ACT TO ALLOW UNAFFILIATED VOTERS TO VOTE IN THE PRIMARY ELECTION OF THE PARTY WHICH AUTHORIZES THAT VOTER TO VOTE, SO AS TO COMPLY WITH A DECISION OF THE SUPREME COURT OF THE UNITED STATES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 163-74 is amended by adding a new subsection to read:

"(a1) Voting by unaffiliated voter in party primary. If a political party has, by action of its State Executive Committee reported to the State Board of Elections by resolution delivered no later than the first day of December preceding a primary, provided that unaffiliated voters may vote in the primary of that party, an unaffiliated voter may vote in the primary of that party by announcing that intention under G.S. 163-150(a). For a party to withdraw its permission, it must do so by action of its State Executive Committee, similarly reported to the State Board of Elections no later than the first day of December preceding the primary where the withdrawal is to become effective."

Sec. 2. G.S. 163-150(a) reads as rewritten:

"(a) Checking Registration. A person seeking to vote shall enter the voting enclosure at the voting place through the appropriate entrance and shall at once state his name and place of residence to one of the judges of election. In a primary election, the voter shall also state the political party with which he affiliates and in whose primary he desires to vote, or if the voter is an unaffiliated voter permitted to vote in the primary of a particular party under G.S. 163-74(a1), the voter shall state the name of the authorizing political party in whose

primary he wishes to vote. The judge to whom the voter gives this information shall announce the name and residence of the voter in a distinct tone of voice. After examining the precinct registration records, the registrar shall state whether the person seeking to vote is duly registered."

Sec. 3. G.S. 163-150(b) reads as rewritten:

"(b) Distribution of Ballots; Information. If the voter is found to be registered and is not challenged, or, if challenged and the challenge is overruled as provided in G.S. 163-88, the responsible judge of election shall hand him an official ballot of each kind he is entitled to vote. In a primary election the voter shall be furnished ballots of the political party with which he affiliates and no others, except that unaffiliated voters who are permitted to vote in a party primary under G.S. 163-74(a1) shall be furnished ballots for that primary. No such unaffiliated voter shall vote in the primary of more than one party on the same day. It shall be the duty of the registrar and judges holding the primary or election to give any voter any information he desires in regard to the kinds of ballots he is entitled to vote and the names of the candidates on the ballots. In response to questions asked by the voter, the registrar and judges shall communicate to him any information necessary to enable him to mark his ballot as he desires."

Sec. 4. G.S. 163-59 reads as rewritten:

"§ 163-59. *Right to participate or vote in party primary.*--No person shall be entitled to vote or otherwise participate in the primary election of any political party unless he

- (1) Is a registered voter, and
- (2) Has declared and has had recorded on the registration book or record the fact that he affiliates with the political party in whose primary he proposes to vote or participate, and
- (3) Is in good faith a member of that party.

Notwithstanding the previous paragraph, any unaffiliated voter who is authorized under G.S. 163-74(a1) may also vote in the primary if the voter is otherwise eligible to vote in that primary except for subdivisions (2) and (3) of the previous paragraph.

Any person who will become qualified by age or residence to register and vote in the general election or regular municipal election for which the primary is held, even though not so qualified by the date of the primary, shall be entitled to register for the primary and general or regular municipal election prior to the primary and then to vote in the primary after being registered. Such person may register not earlier than 60 days nor later than the 21st day (excluding Saturdays and Sundays) prior to the primary."

Sec. 5. G.S. 163-283 reads as rewritten:

" § 163-283. *Right to participate or vote in party primary.*--No person shall be entitled to vote or otherwise participate in the primary election of any political party unless he

(1) Is a registered voter, and

(2) Has declared and has had recorded on the registration book or record the fact that he affiliates with the political party in whose primary he proposes to vote or participate, and

(3) Is in good faith a member of that party.

Notwithstanding the previous paragraph, any unaffiliated voter who is authorized under G.S. 163-74(a1) may also vote in the primary if the voter is otherwise eligible to vote in that primary except for subdivisions (2) and (3) of the previous paragraph.

Any person who will become qualified by age or residence to register and vote in the general election for which the primary is held, even though not so qualified by the date of the primary election, shall be entitled to register while the registration books are open during the regular registration period prior to the primary and then to vote in the primary after being registered, provided however, under full-time and permanent registration, such an individual may register not earlier than 60 days nor later than the 21st day prior to the primary."

Sec. 6. G.S. 163-74(a) reads as rewritten:

"(a) Statement of Party Affiliation or Unaffiliated Status; Record Thereof. Every person who registers to vote shall, at the time application is made, (i) state his desired political party affiliation or (ii) state that he wishes to be recorded as an 'unaffiliated' voter. The person before whom the voter is registering shall record the affiliation requested by the voter. Such recorded party affiliation, or unaffiliated designation, shall thereafter be permanent unless, or until, the registrant changes it under the provisions of subsection (b) of this section.

If the applicant (registrant) refuses to declare his party affiliation upon request, or if the applicant refuses further to state that he desires to be recorded as unaffiliated, then the registrar or other officer shall inform the applicant that although he may register, his record shall be designated 'unaffiliated' and he shall not be eligible to vote in any political party primary, except as authorized by a political party under G.S. 163-74(a1), but may vote in any general election."

Sec. 7. G.S. 163-87 reads as rewritten:

" § 163-87. *Challenges allowed on day of primary or election.*--On the day of a primary or election, at the time a registered voter offers to vote, any other registered voter of the precinct may exercise the right of challenge, and when he does so may enter the voting enclosure to make the challenge, but he shall retire therefrom as soon as the challenge is heard.

On the day of a primary or election, any other registered voter of the precinct may challenge a person for one or more of the following reasons:

- (1) One or more of the reasons listed in G.S. 163-85(c), or
- (2) That the person has already voted in that primary or election, or
- (3) That the person presenting himself to vote is not who he represents himself to be.

On the day of a party primary, any voter of the precinct who is registered as a member of the political party conducting the primary may, at the time any registrant proposes to vote, challenge his right to vote upon the ground that he does not affiliate with the party conducting the primary or does not in good faith intend to support the candidates nominated in that party's primary, and it shall be the duty of the registrar and judges of election to determine whether or not the challenged registrant has a right to vote in that primary according to the procedures prescribed in G.S. 163-88; provided that no challenge may be made on the grounds specified in the paragraph against an unaffiliated voter voting in the primary under G.S. 163-74(a1).

If a person is challenged under this subsection, and the challenge is sustained under G.S. 163-85(c)(3), the voter may still transfer his registration under G.S. 163-72.3, if eligible under that section, and the registration shall not be cancelled under G.S. 163-90.2(a) if the transfer is made. A person who has transferred his registration under G.S. 163-72.3 may be challenged at the precinct to which the registration is being transferred."

Sec. 8. This act shall become effective with respect to primaries held on or after January 1, 1988.

In the General Assembly read three times and ratified this the 18th day of June, 1987.

H.B. 638

CHAPTER 409

**AN ACT TO PROHIBIT INTERFERENCE WITH OR
OBSTRUCTION OF CHILD PROTECTIVE SERVICES
INVESTIGATIONS.**

The General Assembly of North Carolina enacts:

Section 1. Chapter 7A of the General Statutes is amended by adding a new section to read:

"§ 7A-544.1. *Interference with investigation.*--(a) If any person obstructs or interferes with an investigation required by G.S. 7A-544, the Director may file a petition naming said person as respondent and requesting an order directing the respondent to cease such obstruction

or interference. The petition shall contain the name and date of birth and address of the juvenile who is the subject of the investigation, shall specifically describe the conduct alleged to constitute obstruction of or interference with the investigation, and shall be verified.

(b) For purposes of this section, obstruction of or interference with an investigation means refusing to disclose the whereabouts of the juvenile, refusing to allow the director to have personal access to the juvenile, refusing to allow the director to observe or interview the juvenile in private, refusing to allow the director to arrange for an evaluation of the juvenile by a physician or other expert, or other conduct that makes it impossible for the director to carry out his duty to investigate.

(c) Upon filing of the petition, the court shall schedule a hearing to be held not less than five days after service of the petition and summons on the respondent. Service of the petition and summons and notice of hearing shall be made as provided by the Rules of Civil Procedure on the respondent; the juvenile's parent, guardian, custodian, or caretaker; and any other person determined by the court to be a necessary party. If at the hearing on the petition the court finds by clear, cogent and convincing evidence that the respondent, without lawful excuse, has obstructed or interfered with an investigation required by G.S. 7A-544, the court may order the respondent to cease such obstruction or interference. The burden of proof shall be on the petitioner.

(d) If the director has reason to believe that the juvenile is in need of immediate protection or assistance, he shall so allege in the petition and may seek an *ex parte* order from the court. If the court, from the verified petition and any inquiry the court makes of the director, finds probable cause to believe both that the juvenile is at risk of immediate harm and that the respondent is obstructing or interfering with the director's ability to investigate to determine the juvenile's condition, the court may enter an *ex parte* order directing the respondent to cease such obstruction or interference. The order shall be limited to provisions necessary to enable the Director to conduct an investigation sufficient to determine whether the juvenile is in need of immediate protection or assistance. Within 10 days after the entry of an *ex parte* order under this subsection, a hearing shall be held to determine whether there is good cause for the continuation of the order or the entry of a different order. An order entered under this subsection shall be served on the respondent along with a copy of the petition, summons, and notice of hearing.

(e) The Director may be required at a hearing under this section to reveal the identity of any person who made a report of suspected abuse or neglect as required by G.S. 7A-543.

(f) An order entered pursuant to this section is enforceable by civil or criminal contempt as provided in Chapter 5A of the General Statutes."

Sec. 2. G.S. 7A-523 is amended in subsection (a) by deleting the period and substituting a semicolon in subdivision (6) and by adding a new subdivision at the end to read:

"(7) Proceedings in which a person is alleged to have obstructed or interfered with an investigation required by G.S. 7A-544."

Sec. 3. G.S. 7A-562 is amended as follows:

(1) by deleting the period at the end of subdivision (2) of subsection (b) and substituting ", or";

(2) by adding a new subdivision at the end of subsection (b) to read:

"(3) When the Director of the Department of Social Services requests a petition alleging the obstruction of or interference with an investigation required by G.S. 7A-544."

(3) by inserting in the first sentence of subsection (c) between the word "order" and the period the words "or an order under G.S. 7A-544.1".

Sec. 4. This act is effective October 1, 1987.

In the General Assembly read three times and ratified this the 18th day of June, 1987.

H.B. 695

CHAPTER 410

AN ACT TO AMEND THE STATUTE REQUIRING THE DESTRUCTION OF HYPODERMIC NEEDLES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 90-113.4A is rewritten to read:

"(a) It shall be unlawful for any firm, organization, corporation, hospital, or medical clinic, or their agents or employees to discard a hypodermic syringe or needle unless such instrument is unbroken and placed in an incinerator or in a hardwalled container and disposed of in a sanitary landfill. Provided, however, that any such instrument that is accidentally broken shall be disposed of in a like manner.

(b) This section shall not apply to the discarding of such instruments after personal use by individuals who are under the care of a physician.

(c) Further, this section shall not apply to the discarding of such instruments after the use for the treatment of livestock.

(d) Violation of this section shall be a general misdemeanor."

Sec. 2. This act shall become effective November 1, 1987.

In the General Assembly read three times and ratified this the 18th day of June, 1987.

H.B. 864

CHAPTER 411

AN ACT ALLOWING THE PITT COUNTY BOARD OF ELECTIONS TO CROSS TOWNSHIP LINES IN DRAWING PRECINCT LINES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 163-128(a) is amended by adding the following at the end:

"The provisions of this section concerning the use of township lines do not apply to Pitt County."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 18th day of June, 1987.

H.B. 878

CHAPTER 412

AN ACT TO MAKE CHANGES IN THE SCHEDULING OF CERTAIN CONTROLLED SUBSTANCES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 90-89(a) is amended by adding new sub-subdivisions in the proper alphabetical order to read:

"28a. 1-methyl-4-phenyl-4-propionoxypiperidine (MPPP).

"28b. 3-Methylfentanyl (N-[3-methyl-1-(2-Phenylethyl)-4-Piperidyl]-N-Phenylpropanamide).

"35a. 1-(2-phenethyl)-4-phenyl-4-acetoxypiperidine (PEPAP)."

Sec. 2. G.S. 90-89(a) is amended by deleting the following sub-subdivision:

"1a. Alfentanil."

Sec. 3. G.S. 90-89(b) is amended by rewriting the following sub-subdivision to read:

"13. Methyldihydromorphine."

Sec. 4. G.S. 90-89(c) is amended by adding a new sub-subdivision in the proper alphabetical order to read:

"2a. 3,4-Methylenedioxymethamphetamine (MDMA).

Sec. 5. G.S. 90-89(e) is amended by adding a new sub-subdivision in the proper alphabetical order to read:

"2. N-ethylamphetamine."

Sec. 5A. G.S. 90-90(a)(1) is amended by inserting between the phrase "nalbuphine," and the word "naloxone" the phrase "dextrorphan," and is further amended by deleting "and naltrexone" and inserting in lieu thereof the phrase "naltrexone, and nalmeferone".

Sec. 6. G.S. 90-90(b) is amended by adding a new sub-subdivision in the proper alphabetical order to read:

"01. Alfentanil."

Sec. 7. G.S. 90-90 is amended by adding a new subsection to read:

"(e) Any material, compound, mixture, or preparation which contains any quantity of the following hallucinogenic substances, including their salts, isomers, and salts of isomers, unless specifically excepted, or listed in another schedule, whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

"1. Dronabinol (synthetic) in sesame oil and encapsulated in a soft gelatin capsule in a U.S. Food and Drug Administration approved drug product. [Some other names: (6aR-trans)-6a,7,8,10a-tetrahydro-6,6,9-trimethyl-3-pentyl-6H-dibenzo[b,d]pyran-1-ol, or (-)-delta-9-(trans)-tetrahydrocannabinol]."

Sec. 8. G.S. 90-91(b) is amended by adding a new sub-subdivision in the proper alphabetical order to read:

"9a. Tiletamine and zolazepam or any salt thereof. Some trade or other names for tiletamine-zolazepam combination product: Telazol. Some trade or other names for tiletamine:

2-(ethylamino)-2-(2-thienyl)-cyclohexanone. Some trade or other names for zolazepam: 4-(2-fluorophenyl)-6,8-dihydro-1,3,8-trimethylpyrazolo-[3,4-e][1,4]-diazepin-7(1H)-one. flupyrzapon."

Sec. 9. G.S. 90-91(j) is amended by rewriting the following sub-subdivision to read:

"3. Clortermine."

Sec. 10. G.S. 90-91(j) is amended by deleting the following sub-subdivision:

"4. Mazindol."

Sec. 11. G.S. 90-92(a) is amended by rewriting the sub-subdivisions to read:

"1. Alprazolam.

"2. Barbitol.

"3. Bromazepam.

"4. Camazepam.

- "5. Chloral betaine.
- "6. Chloral hydrate.
- "7. Chlordiazepoxide.
- "8. Clobazam.
- "9. Clonazepam.
- "10. Clorazepate.
- "11. Clotiazepam.
- "12. Cloxazolam.
- "13. Delorazepam.
- "14. Diazepam.
- "15. Estazolam.
- "16. Ethchlorvynol.
- "17. Ethinamate.
- "18. Ethyl loflazepate.
- "19. Fludiazepam.
- "20. Flunitrazepam.
- "21. Flurazepam.
- "22. Halazepam.
- "23. Haloxazolam.
- "24. Ketazolam.
- "25. Loprazolam.
- "26. Lorazepam.
- "27. Lormetazepam.
- "28. Mebutamate.
- "29. Medazepam.
- "30. Meprobamate.
- "31. Methohexital.
- "32. Methylphenobarbital (mephobarbital).
- "33. Midazolam.
- "34. Nimetazepam.
- "35. Nitrazepam.
- "36. Nordiazepam.
- "37. Oxazepam.
- "38. Oxazolam.
- "39. Paraldehyde.
- "40. Petrichloral.
- "41. Phenobarbital.
- "42. Pinazepam.
- "43. Prazepam.
- "44. Quazepam.
- "45. Temazepam.
- "46. Tetrazepam.
- "47. Triazolam."

Sec. 12. G.S. 90-92(f) is amended by adding a new subdivision to read:

"2. Buprenorphine."

Sec. 13. G.S. 90-101 is amended by adding a new subsection to read:

"(i) A physician licensed by the Board of Medical Examiners pursuant to Article 1 of this Chapter may dispense or administer Dronabinol as scheduled in G.S. 90-90(e) only as an antiemetic agent in cancer chemotherapy."

Sec. 14. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 18th day of June, 1987.

H.B. 879

CHAPTER 413

AN ACT TO AMEND PROCEDURES FOR SCHEDULING
CONTROLLED SUBSTANCES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 90-88 (a) is rewritten to read as follows:

"(a) The Commission may add, delete, or reschedule substances within Schedules I through VI of this Article on the petition of any interested party, or its own motion. In every case the Commission shall give notice of and hold a public hearing pursuant to G.S. 150B prior to adding, deleting or rescheduling a controlled substance within Schedules I through VI of this Article, except as provided in subsection (d) of this section. A petition by the Commission, the North Carolina Department of Justice, or the North Carolina Board of Pharmacy to add, delete, or reschedule a controlled substance within Schedules I through VI of this Article shall be placed on the agenda, for consideration, at the next regularly scheduled meeting of the Commission, as a matter of right."

Sec. 2. G.S. 90-88 is amended by inserting a new subsection (a1) to read as follows:

"(a1) In making a determination regarding a substance, the Commission shall consider the following:

- (1) The actual or relative potential for abuse;
- (2) The scientific evidence of its pharmacological effect, if known;
- (3) The state of current scientific knowledge regarding the substance;
- (4) The history and current pattern of abuse;
- (5) The scope, duration, and significance of abuse;
- (6) The risk to the public health;

- (7) The potential of the substance to produce psychic or physiological dependence liability; and
- (8) Whether the substance is an immediate precursor of a substance already controlled under this Article."

Sec. 3. G.S. 90-88 (d) is rewritten to read as follows:

"If any substance is designated, rescheduled or deleted as a controlled substance under federal law, the Commission shall similarly control or cease control of, the substance under this Article unless the Commission objects to such inclusion. The Commission, at its next regularly scheduled meeting that takes place 30 days after publication in the Federal Register of a final order scheduling a substance, shall determine either to adopt a rule to similarly control the substance under this Article or to object to such action. No rule-making notice or hearing as specified by G.S. 150B is required if the Commission makes a decision to similarly control a substance, but any rule so adopted shall be filed pursuant to Article 5 of Chapter 150B. However, if the Commission makes a decision to object to adoption of the federal action, it shall initiate rule-making procedures pursuant to G.S. 150B within 180 days of its decision to object."

Sec. 4. G.S. 90-88 (h) is repealed.

Sec. 5. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 18th day of June, 1987.

H.B. 1011

CHAPTER 414

AN ACT TO REPLACE THE PUBLIC SCHOOL CENTRAL PAYROLL WITH A UNIFORM EDUCATION REPORTING SYSTEM.

The General Assembly of North Carolina enacts:

Section 1. G.S. 115C-12(18) is rewritten to read:

"(18) Duty to Develop and Implement a Uniform Education Reporting System, Which Shall Include Standards and Procedures for Collecting Fiscal and Personnel Information.

- a. The State Board of Education shall adopt standards and procedures for local school administrative units to provide timely, accurate, and complete fiscal and personnel information, including payroll information, on all school personnel. All local school administrative units shall comply with these standards and procedures by the beginning of the 1987-88 school year.

- b. The State Board of Education shall develop and implement a Uniform Education Reporting System that shall include requirements for collecting, processing, and reporting fiscal, personnel, and student data, by means of electronic transfer of data files from local computers to the State Computer Center through the State Communications Network. All local school administrative units shall comply with the requirements of the Uniform Education Reporting System by the beginning of the 1989-90 school year".

Sec. 2. G.S. 115C-47(21) is rewritten to read:

"(21) It is the duty of every local board of education to provide for the prompt monthly payment of all salaries due teachers and other school officials and employees, and of all current bills and other necessary operating expenses. All salaries and bills shall be paid as provided by law for disbursing State and local funds.

The local board shall determine salary schedules of employees pursuant to the provisions of G.S. 115C-273, 115C-285(b), 115C-302(c), and 115C-316(b).

The authority for boards of education to issue salary vouchers to all school employees, whether paid from State or local funds, shall be a monthly payroll prepared on forms approved by the State Board of Education and containing all information required by the controller of the State Board of Education. This monthly payroll shall be signed by the principal of each school."

Sec. 3. Section 145(b) of Chapter 757 of the 1985 Session Laws is repealed.

Sec. 4. G.S. 115C-272(b)(1) is amended by deleting the first two sentences and substituting:

"Salary payments to superintendents shall be made monthly on the basis of each calendar month of service."

Sec. 5. G.S. 115C-285(a)(1) is amended by deleting the second and third sentences and substituting:

"Salary payments to classified principals and State-allotted supervisors shall be made monthly at the end of each calendar month of service."

Sec. 6. G.S. 115C-302(a)(1) is amended by deleting the the second sentence and the language before the proviso in the third sentence and substituting:

"Salary payments to regular State-allotted teachers shall be made monthly at the end of each calendar month of service:".

Sec. 7. G.S. 115C-302(a)(2) is amended by deleting the second sentence and language before the proviso in the third sentence and substituting:

"Salary payments to these occupational education teachers shall be made monthly at the end of each calendar month of service:".

Sec. 8. G.S. 115C-316(a)(1) is amended by deleting the first and second sentences and substituting:

"Salary payments to employees other than superintendents, supervisors, and classified principals employed on an annual basis shall be made monthly at the end of each calendar month of service."

Sec. 9. G.S. 115C-316(a)(2) is amended by deleting the first and second sentences and substituting:

"Salary payments to employees other than those covered in G.S. 115C-272(b)(1), 115C-285(a)(1) and (2), 115C-302(a)(1) and (2), and 115C-316(a)(1) shall be made at a time determined by each local board of education."

Sec. 10. Section 145(l) of Chapter 757 of the 1985 Session Laws is repealed.

Sec. 11. G.S. 115C-14 is repealed.

Sec. 12. G.S. 115C-29(b)(11a) is rewritten to read:

"(11a) He shall have responsibility for documenting, issuing and updating the standards and procedures for local school administrative units to provide timely, accurate, and complete fiscal and personnel information, including payroll information, to the State Board of Education.

He shall have responsibility for the implementation and maintenance of the Uniform Education Reporting System that shall include requirements for collecting, processing, and reporting fiscal, personnel, and student data, by means of electronic transfer of data files from local computers to the State Computer Center through the State Communications Network."

Sec. 13. The Controller of the State Board of Education shall report his progress in implementing the Uniform Education Reporting System, which shall include standards and procedures for collecting fiscal, personnel, and payroll information, to the Joint Legislative Commission on Governmental Operations and to the Fiscal Research Division in September 1987, December 1987, and May 1988.

The Controller of the State Board of Education shall also report to the Joint Legislative Commission on Governmental Operations, the Fiscal Research Division, and the Legislative Automated Systems Division, in August 1987, on the printed and electronic formats in which he intends to provide to the General Assembly the payroll and personnel information compiled with the Uniform Education Reporting System.

Sec. 14. The second paragraph of G.S. 115C-438 is amended by adding a new sentence at the end to read:

"The Controller shall withhold money for payment of salaries for the superintendent, finance officer, and all other administrative officers charged with providing payroll information pursuant to G.S. 115C-12(18), if the local school administrative unit fails to provide the payroll information to the State Board in a timely fashion and substantially in accordance with the standards set by the State Board."

Sec. 15. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 18th day of June, 1987.

H.B. 1040

CHAPTER 415

AN ACT TO ALLOW MILITARY ABSENTEE VOTERS TO APPLY
FOR ABSENTEE BALLOTS FOR ALL THE ELECTIONS IN A
CALENDAR YEAR.

The General Assembly of North Carolina enacts:

Section 1. G.S. 163-247 reads as rewritten:

"§ 163-247. *Methods of applying for absentee ballots.*--An individual entitled to exercise the rights conferred by this Article and who is absent from the county of his residence may apply for absentee ballots in either of the ways provided in this section.

- (1) Federal Postcard Application Form. At any time prior to the statewide primary or general election in which he seeks to vote, the applicant may make and sign a written application to the ~~Secretary of State~~ County Board of Election in County of Voter's Residence for absentee ballots on the postcard form ~~prescribed in Public Law 712 of the Seventy-seventh Congress specified in or promulgated by regulation under 42 U.S.C. 1973cc-14.~~ Upon receiving such an application, the Secretary of State shall record the applicant's name and residence address on a record maintained for that purpose and immediately send the application to the chairman of the board of elections of the county in which the applicant has his residence, together with instructions for handling the application under the provisions of this Article.
- (2) Application to Chairman of County Board of Elections. In lieu of applying on the federal post card as provided in the preceding subdivision, at any time prior to the statewide primary or general election in which he seeks to vote the applicant may make and sign a written application to the chairman of the board of elections of the county of his residence upon a form prepared and furnished him upon

request by the county board of elections. This form shall require the applicant's signature and shall elicit from him:

- a. A request for absentee ballots to be voted in a specified statewide primary or general election.
- b. A statement of his political party affiliation if he seeks to vote by absentee ballot in a primary election.
- c. A statement of his membership in the armed forces of the United States, or his membership in one of the other categories to which this Article is made applicable in G.S. 163-245.
- d. A statement of the precinct in which he is registered to vote, or, if the applicant is not registered, a statement of his address before entering military or other qualifying service and the period of time he resided at that address.
- e. A statement of the address to which the absentee ballots should be mailed.

- (3) Notwithstanding subdivisions (1) or (2) of this section, if the application under either of those subdivisions so requests, it shall constitute an application for more than one or for all of the primaries and elections held during the calendar year when the application is received.

In lieu of using a form prepared and furnished by the county board of elections, the voter may apply in an informal writing. If the written application is signed by the voter and if it contains all the information required by this subdivision, it shall be regarded as sufficient to permit the chairman of the county board of elections to act upon it."

Sec. 2. This act shall become effective with respect to primaries and elections held on or after January 1, 1988.

In the General Assembly read three times and ratified this the 18th day of June, 1987.

H.B. 1070

CHAPTER 416

AN ACT TO REQUIRE THE PROMPT RETURN OF BALLOT BOXES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 163-171 reads as rewritten:

" § 163-171. *Preservation of ballots; locking and sealing ballot boxes; signing certificates.*--When the precinct count is completed after a primary or election, all ballots shall be put back in the ballot boxes

from which they were taken, and the registrar and judges shall promptly lock and place a seal around the top of each ballot box, so that no ballot may be taken from or put in it. The registrar and judges shall then sign the seal on each ballot box. In the alternative, the county board of elections may permit the precinct officials to put the counted ballots back in one ballot box or more to facilitate safekeeping provided the board prescribes an appropriate procedure to keep the different kinds of ballots separated in bundles or bags within the box.

Ballot boxes in which ballots have been placed and which have been locked and sealed as required by the preceding paragraph shall remain in the safe custody of the registrar, subject to the orders of the chairman of the county board of elections as to their disposition; provided that ballot boxes with paper ballots shall be delivered in person to the office of the county board of elections; provided further that in the case of paper ballots which have been counted either mechanically or electronically either the counting machines with the paper ballots sealed inside shall be delivered in person to the office of the county board of elections, or the paper ballots shall be placed in ballot boxes, sealed, and those boxes shall be delivered in person to the office of the county board of elections. The ballots and ballot boxes shall be delivered at a time specified by the county board of elections. No ballot box shall be opened except upon the written order of the county board of elections or upon a proper order of court.

Ballots cast in a primary or general election shall be preserved for at least two months after the primary or general election in which voted.

On each precinct return form there shall be printed a statement to be signed by the registrar and judges certifying that, after the precinct count was completed, each ballot box was properly locked, sealed, and the seals signed, as prescribed in this section, before the precinct officials left the voting place on the night of the primary or election.

Willful failure to securely lock, seal, and sign the seal on each ballot box on the night of any primary or election, and willful failure to sign the certificate on the duplicate return forms certifying that this was done, shall constitute a misdemeanor."

Sec. 2. This act shall become effective with respect to primaries and elections held on or after January 1, 1988.

In the General Assembly read three times and ratified this the 18th day of June, 1987.

S.B. 341

CHAPTER 417

AN ACT TO REMOVE THE SUNSET AND PERMIT THE DIVISION OF SERVICES FOR THE BLIND OF THE DEPARTMENT OF HUMAN RESOURCES TO OPERATE VENDING MACHINES ON INTERSTATE HIGHWAYS AND CONTROLLED-ACCESS HIGHWAYS.

The General Assembly of North Carolina enacts:

Section 1. Sections 4 and 5 of Chapter 718 of the 1985 Session Laws are repealed.

Sec. 2. Section 6 of Chapter 718 reads as rewritten:

"Sec. 6. This act is effective upon ratification ~~and shall expire on June 30, 1987.~~"

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 19th day of June, 1987.

S.B. 399

CHAPTER 418

AN ACT TO ALLOW THE COUNTY OF DURHAM TO ADOPT AND COMPLY WITH MINIMUM MINORITY AND/OR WOMEN'S BUSINESS ENTERPRISE REQUIREMENTS.

The General Assembly of North Carolina enacts:

Section 1. The County of Durham, by and through its Board of Commissioners, may adopt minimum minority and/or women's business enterprise participation requirements in projects financed by public funds to ensure equal employment opportunities and/or to redress past discrimination, and to comply with these requirements by including them in the specifications for contract to perform all or part of such projects, soliciting proposals for said contracts from bidders pursuant to G.S. 143-129 and G.S. 143-131, if applicable, and awarding the contract to the lowest responsible bidder meeting these and all other specifications.

Sec. 2. The minimum minority and/or women's business enterprise participation requirements authorized by this act shall be adopted only after appropriate public hearings before the Board of Commissioners, notice of which must be given not less than 10 days prior to the date set for said hearings.

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 19th day of June, 1987.

AN ACT TO INCORPORATE GRANDFATHER VILLAGE,
SUBJECT TO A REFERENDUM.

The General Assembly of North Carolina enacts:

Section 1. A Charter is enacted for Grandfather Village to read:

"CHARTER OF GRANDFATHER VILLAGE.

"Chapter I.

"Incorporation and Corporate Powers.

"Sec. 1.1. Incorporation and corporate powers. The inhabitants of Grandfather Village are a body corporate and politic under the name 'Grandfather Village'.

"Sec. 1.2. Powers. As a body politic and corporate and under the name and style 'Grandfather Village', the village shall have all the powers, duties, rights, privileges, and immunities conferred and imposed upon cities by the general law of North Carolina.

"Chapter II.

"Corporate Boundaries.

"Sec. 2.1. Village boundaries. Until modified in accordance with law, the boundaries of Grandfather Village are as follows:

BEGINNING at a point in the center line of NC Highway 105, corner of 128 acre Tract III conveyed to Grandfather Enterprises, Inc. by Deed dated November 1, 1980, recorded in Book 124, Page 776, Avery County Registry; thence with the center line of NC Highway 105 the following courses and distances: North 73°22' East 101.89 feet, North 67°26' East 102.22 feet, North 61°10' East 101.87 feet, North 54°55' East 102.45 feet, North 48°41' East 101.91 feet, North 43°39' East 101.72 feet, North 42°19' East 1000.71 feet, North 42°06' East 99.61 feet, North 40°55' East 100.81 feet, North 36°05' East 100.94 feet, North 30°19' East 101.50 feet, North 24°03' East 101.86 feet, North 16°44' East 102.28 feet, North 11°02' East 3.30 feet, North 06°50' East 275.82 feet, North 02°27' East 597.23 feet, North 02°24' East 60.93 feet, North 02°39' East 99.49 feet, North 02°30' East 100.55 feet, North 03°13' East 99.39 feet, North 05°02' East 100.37 feet, North 07°58' East 98.58 feet, North 10°40' East 100.26 feet, North 14°21' East 98.30 feet, North 16°52' East 103.18 feet, North 19°11' East 1196.52 feet, North 19°19' East 99.51 feet, North 20°10' East 72.34 feet, North 20°52' East 35.18 feet, North 26°57' East 119.85 feet, North 34°14' East 101.15 feet, North 41°36' East 120.30 feet, North 46°12' East 86.54 feet, North 48°17' East 378.11 feet, North 46°39' East 112.45 feet, North 42°30' East

94.96 feet, North 38°58' East 146.47 feet, North 39°49' East 1513.89 feet, North 39°08' East 99.70 feet, North 38°27' East 101.04 feet, North 37°38' East 99.84 feet, North 29°43' East 102.76 feet, North 22°11' East 102.47 feet, North 32°33' East 100.20 feet, North 25°31' East 1301.01 feet to a point in the center line of NC Highway 105, corner of 959 acre Tract I as conveyed to Grandfather Enterprises, Inc. by Deed dated November 1, 1980, recorded in Book 124, Page 776, Avery County Registry; thence leaving the center line of NC Highway 105 and running with the line of Grandfather Enterprises, Inc. (now Wilmor Corp.), the following courses and distances: South 57°01' East 265.52 feet, South 52°05' East 105.70 feet, South 39°19' East 129.32 feet, South 17°09' East 162.85 feet, South 36°22' West 170.71 feet, South 58°06' West, 139.39 feet, South 39°16' West 200.34 feet, South 51°59' East 170.77 feet, North 55°37' East 171.10 feet, South 86°32' East 116.34 feet, North 63°25' East 193.60 feet, South 06°28' East 196.60 feet, North 76°03' East 66.80 feet, South 03°03' East 221.00 feet, South 08°22' East 187.20 feet, South 10°48' East 81.36 feet, South 29°47' East 66.80 feet, South 34°30' East 80.10 feet, South 84°10' East 130.10 feet, South 50°21' East 70.60 feet, South 25°06' East 99.60 feet, South 34°03' East 134.56 feet, South 06°51' West 175.60 feet, South 13°56' West 97.90 feet, North 76°25' East 201.20 feet, South 07°00' East 110.00 feet, South 49°32' East 143.00 feet, North 34°12' East 79.65 feet, North 14°21' East 83.00 feet, North 12°59' East 123.90 feet, North 40°58' East 150.45 feet, North 29°51' West 74.12 feet, North 79°21' East 111.28 feet, North 84°56' East 127.98 feet, North 74°26' East 100.98 feet, South 85°27' East 155.97 feet, South 58°13' East 109.85 feet, South 82°16' East 130.09 feet, South 67°32' East 109.89 feet, North 84°32' East 48.49 feet, North 67°36' East 89.59 feet, South 86°55' East 144.83 feet, North 08° 24' West 361.00 feet, North 67°29' East 321.45 feet, South 39°00' East 393.10 feet, North 64°16' East 86.36 feet, South 68°55' East 63.13 feet, North 73°51' East 59.78 feet, North 87°18' East 65.27 feet, South 75°28' East 110.68 feet, South 15°12' East 131.65 feet, South 15°31' East 242.13 feet, South 00°56' West 211.03 feet, South 25°58' West 183.02 feet, South 26°19' West 59.50 feet, South 59°01' West 134.89 feet, South 47°07' West 224.94 feet, South 26°44' East 180.00 feet, South 26°41' East 142.15 feet, North 78°00' East 200.00 feet, South 13°52' East 188.06 feet, South 78°00' West 200.00 feet, South 09°22' East 55.00 feet, South 01°53' West 236.19 feet, South 30°00' West 239.76 feet, and 57°18' East 806.98 feet to a point in the line of Grandfather Mountain, Inc.; thence with the line of Grandfather Mountain, Inc. the following courses and distances: South 45°35' West 5634.30 feet, South 51°10' West 3973.39 feet, North 80°09' West 45.63 feet,

North 81°16' West 55.95 feet, North 87°54' West 62.15 feet, South 81°48' West 52.96 feet, South 72°24' West 56.66 feet, South 64°15' West 53.33 feet, South 55°29' West 55.42 feet, South 46°05' West 511.24 feet, South 36°54' West 58.54 feet, South 23°53' West 58.83 feet, South 12°13' West 54.57 feet, South 08°43' West 47.16 feet, South 02°13' West 100.14 feet, South 07°31' West 48.36 feet, South 23°51' West 63.71 feet, and South 55°07' West 113.07 feet to a point, corner of the 128 acre tract referred to above; thence with the line of said 128 acre tract the following courses and distances: North 34°38' West 535.22 feet, South 70°31' West 149.30 feet, South 86°16' West 129.25 feet, South 84°13' West 231.20 feet, North 78°05' West 231.90 feet, North 45°33' West 188.79 feet, North 07°51' West 211.68 feet, North 16°25' West 205.70 feet, North 21°35' West 206.44 feet, North 15°27' West 241.64 feet, North 65°10' West 134.27 feet, North 38°22' West 49.19 feet, North 00°26' East 110.36 feet, North 07°36' West 131.25 feet, North 24°59' West 73.20 feet, North 16°55' West 220.00 feet, North 61°55' East 180.85 feet, North 80°45' East 308.90 feet, North 82°47' East 133.90 feet, North 16°21' West 170.90 feet, North 22°08' West 168.70 feet, North 35°19' East 230.67 feet, and North 07°39' West 122.64 feet to the point of BEGINNING. Containing approximately 1009 acres by D.M.D. as shown on maps of survey prepared by Robert E. Grindstaff, RLS L-1294, dated January 19, 1982, March 17, 1982, and October 23, 1980, Map No.s 182005-1, 382050-0, and 1080238-1, respectively.

"Chapter III.

"Governing Body.

"Sec. 3.1. Type and number of members. The governing body of Grandfather Village is the Village Council, which has four members, and the Mayor.

"Sec. 3.2. Manner of electing board. The qualified voters of the entire Village nominate and elect the members of the Council in accordance with the general laws of North Carolina.

"Sec. 3.3. Term of office of Council members. Until members are elected in accordance with this section, the Village Council shall consist of Robert C. Bowness, William B. Cocke, Jr., Hugh A. Fields, and Andre Tennille. In the 1987 municipal election, the two persons receiving the highest numbers of votes shall be elected for four-year terms, and the two persons receiving the next highest numbers of votes shall be elected for two-year terms. In 1987 and biennially thereafter, two members shall be elected for four-year terms.

"Sec. 3.4. Election of Mayor; term of office. Until a Mayor is elected in accordance with this section, Robert H. Crawford shall

serve as Mayor. In 1987 and biennially thereafter, a Mayor shall be elected for a two-year term.

"Chapter IV.

"Elections.

"Sec. 4.1. Conduct of Village elections. The Mayor and Village Council shall be elected on a nonpartisan basis and the results determined by the plurality method as provided by G.S. 163-292.

"Chapter V.

"Administration.

"Sec. 5.1. Council-manager plan. Grandfather Village operates under the council-manager plan as provided by Part 2 of Article 7 of Chapter 160A of the General Statutes.

"Sec. 5.2. Interim budget. The Board of Commissioners may adopt a budget ordinance for the 1987-88 fiscal year, following their qualification for office, without having to comply with the budget preparation and adoption timetable set out in the Local Government Budget and Fiscal Control Act. If the initial budget is adopted after January 1, 1988, property taxes may be paid at par within 90 days of adoption of the budget ordinance, and thereafter according to the schedule in G.S. 105-360 as if the taxes had been due on September 1, 1987.

"Sec. 5.3. Boards and commissions. The Village Council shall appoint a Village Advisory Council which shall consist of not less than five nor more than nine members who shall be owners of real property within the corporate limits, but who shall not necessarily be a qualified voter or resident of Grandfather Village. Such Advisory Commission shall advise the Village Council on all matters involving village services, police and fire protection, utility services and other matters.

In addition the Village Council may appoint such other commissions and committees as may be deemed necessary or advisable in providing local governmental services to the village.

"Sec. 5.4. Streets. The Village Council may acquire and maintain a system of public streets and roads and may also acquire, maintain and provide for private streets and roads for the purpose of assuring adequate police and security services to its residents. In maintaining private streets and roads, the Council may limit public access to private roads and streets by utilizing traffic control signals, signs, security gates and other appropriate means.

Notwithstanding G.S. 40A-3(b)(1) or the provisions of Article 9 of Chapter 136 of the General Statutes, the village may not so acquire by condemnation any privately owned property in the area described in Chapter II of this Charter for the purpose of opening, widening, or extending any private road, street or sidewalk or acquiring rights-of-way for roads, streets or highways.

In providing for its streets and road system, the village may not apply for and is not eligible to receive Powell Bill Funds administered by the State of North Carolina under G.S. 136-41.1."

Sec. 2. (a) The Avery County Board of Elections shall conduct an election no later than August 15, 1987, for the purpose of submission to the qualified voters of the area described in Section 2.1 of the Charter of Grandfather Village, the question of whether or not such area shall be incorporated as Grandfather Village. Registration for the election shall be conducted in accordance with G.S. 163-288.2.

(b) In the election, those voters who favor the incorporation of Grandfather Village as provided in this act shall vote a ballot upon which shall be printed the words: "FOR Incorporation of Grandfather Village", and those voters who are opposed to the incorporation of Grandfather Village as provided in this act shall vote a ballot upon which shall be printed the words: "AGAINST Incorporation of Grandfather Village".

Sec. 3. In such election, if a majority of the votes cast are not cast "FOR Incorporation of Grandfather Village", then Section 1 of this act shall have no force and effect.

Sec. 4. In such election, if a majority of the votes cast shall be cast "FOR Incorporation of Grandfather Village" then Section 1 of this act shall become effective on the date that the Avery County Board of Elections determines the result of the election. For the 1987 municipal election, notwithstanding G.S. 163-294.2(c), candidates shall file their notices of candidacy not later than 12:00 noon on the first Friday in September of 1987 if the referendum is held on or after July 1, 1987.

Sec. 5. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 19th day of June, 1987.

S.B. 613

CHAPTER 420**AN ACT TO EXEMPT BUNCOMBE COUNTY FROM CERTAIN
PROCEDURAL REQUIREMENTS ON DISPOSAL OF LAND AS
AN INDUSTRIAL PARK.**

The General Assembly of North Carolina enacts:

Section 1. Section 3 of Chapter 137 of the 1981 Session Laws, as amended by Chapters 405 and 399 of the 1983 Session Laws, is further amended by adding immediately before the word "Cherokee," the word "Buncombe,".

Sec. 2. This act is effective upon ratification. The provisions of this act shall expire and become void on July 1, 1989.

In the General Assembly read three times and ratified this the 19th day of June, 1987.

S.B. 768

CHAPTER 421

AN ACT TO PROVIDE FOR POLICIES OF WINDSTORM AND
HAIL INSURANCE TO BE AVAILABLE THROUGH THE
BEACH PLAN.

The General Assembly of North Carolina enacts:

Section 1. G.S. 58-173.8(b) reads as rewritten:

"(b) If the Association determines that the property is insurable and that there is no unpaid premium due from the applicant for prior insurance on the property, the Association upon receipt of the premium, or such portion thereof, as is prescribed in the plan of operation, shall cause to be issued a policy of essential property insurance and shall offer additional extended coverage and crime insurance, and separate policies of windstorm and hail insurance, for a term of one year. Any policy issued pursuant to the provisions of this section shall be renewed annually, upon application therefor, so long as the property meets the definition of 'insurable property' set forth in G.S. 58-173.2(5)."

Sec. 2. G.S. 58-173.8 is amended by adding a new subsection to read:

"(e) Policies of windstorm and hail insurance provided for in subsection (b) of this section are available only for risks for which fire insurance has been written by licensed insurers. In order to be eligible for a policy of windstorm and hail insurance, the applicant shall provide the Association, along with the premium payment for the windstorm and hail insurance, a certificate that the fire insurance is in force. Notwithstanding G.S. 58-173.10, the rates, rating plans, and rating rules for windstorm and hail insurance shall be filed by the Association with the Commissioner for his approval. The policy forms for windstorm and hail insurance shall be filed by the Association with the Commissioner for his approval before they may be used."

Sec. 3. Within 60 days after the effective date of this act, the Board of Directors of the Beach Plan shall submit a revised plan of operation for approval by the Commissioner in accordance with G.S. 58-173.7.

Sec. 4. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 19th day of June, 1987.

S.B. 868

CHAPTER 422

AN ACT TO ALLOW COUNTIES TO DEVELOP A SINGLE PORTAL OF ENTRY, A CONSOLIDATED CASE MANAGEMENT SYSTEM, AND A COMMON DATA BASE FOR HUMAN SERVICES.

The General Assembly of North Carolina enacts:

Section 1. Chapter 153A of the General Statutes is amended by adding a new section to read:

" § 153A-77.1. *Single portal of entry.*--A county may develop for human services a single portal of entry, a consolidated case management system, and a common data base; provided that if the county is part of a district health department or a multi-county area mental health, mental retardation, and substance abuse authority, such action must be approved by the district board of health or the area mental health, mental retardation, and substance abuse board to affect any matter within the jurisdiction of that board. Nothing in this section shall be construed to abrogate a patient's right to confidentiality as provided by law."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 19th day of June, 1987.

H.B. 454

CHAPTER 423

AN ACT CONCERNING THE POWERS OF HOUSING AUTHORITIES.

The General Assembly of North Carolina enacts:

Section 1. The following section is hereby added to Chapter 159 of the General Statutes:

" § 157-9.2. *Additional powers.*--(a) The findings and purposes set forth in the first three paragraphs of G.S. 122A-2 and in G.S. 122A-5.4(a) are hereby restated and incorporated herein by reference, except that for purposes of incorporating such findings and purposes herein, the phrases 'North Carolina Housing Finance Agency' and 'Agency' shall read 'authority' and the word 'Chapter' shall read 'Section'.

(b) Words and phrases used in this section and not otherwise defined in this Chapter shall be defined as provided in Chapter 122A of the General Statutes, except that for purposes of incorporating such definitions into this section, the phrases 'North Carolina Housing Finance Agency' and 'Agency' shall read 'authority' and the 'Chapter' shall read 'Section'.

(c) An authority shall have all of the powers necessary or convenient to carry out and effectuate the purposes and provisions of this section, including, without limiting the generality of the foregoing, the power:

- (1) To make or participate in the making of mortgage loans to sponsors of residential housing; provided, however, that such loans shall be made only upon the determination by the authority that mortgage loans are not otherwise available wholly or in part from public or private lenders upon equivalent terms and conditions;
- (2) To make or participate in the making of mortgage loans to persons and families of lower income and persons and families of moderate income for residential housing; provided, however, that such loans shall be made only upon the determination by the authority that mortgage loans are not otherwise available wholly or in part from public or private lenders upon equivalent terms and conditions;
- (3) To make loans to mortgage lenders on terms and conditions requiring the proceeds thereof to be used by such mortgage lenders to originate new mortgage loans to (i) sponsors of residential housing for persons and families of lower income and persons and families of moderate income and (ii) persons and families of lower income and persons and families of moderate income for residential housing. The loans to mortgage lenders and the loans to be made by such mortgage lenders shall be made on such applicable terms and conditions as are set forth in rules and regulations of the authority or otherwise established by the authority; provided, however, that loans shall be made by such mortgage lenders only upon the determination by the authority that such financing is not otherwise available, wholly or in part, from public or private lenders upon equivalent terms and conditions;
- (4) To collect and pay reasonable fees and charges in connection with making, purchasing and servicing of its loans, notes, bonds, commitments and other evidences of indebtedness; and
- (5) To borrow money to carry out and effectuate its corporate purposes and to issue its obligations as evidence of any such borrowing.

(d) Notwithstanding the provisions of G.S. 157-17.1, the approval of the Local Government Commission shall not be necessary for the issuance of bonds or the incurrence of indebtedness pursuant to this section, and the provisions of the Local Government Finance Act shall not be applicable with respect to bonds issued or indebtedness

incurred pursuant to this section. Provided further that notwithstanding any other provision of State law or local ordinance, the approval of the governing body of the county or city in which the housing authority is located shall be necessary for the issuance of bonds or the incurrence of indebtedness pursuant to this section.

(e) This section applies only to housing authorities in any county with an area of 250 square miles or less and a population of more than 100,000 according to the most recent decennial federal census, and applies to all housing authorities of all cities within such counties.

(f) Not later than 30 days prior to making its determination, pursuant to subsections (c)(1), (2) or (3) of this section, that mortgage loans are not otherwise available wholly or in part from public or private lenders upon equivalent terms and conditions, an authority shall give written notice of a proposed financing, including the proposed terms and conditions of the mortgage loans to be made, to the North Carolina Housing Finance Agency. Within 20 days following receipt of such notice, the North Carolina Housing Finance Agency shall respond, in writing, to the authority, and provide the authority with any terms and conditions of mortgage loans which the Agency can make available and which the Agency believes are reasonably relevant to said determination."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 19th day of June, 1987.

H.B. 610

CHAPTER 424

AN ACT TO AUTHORIZE PAMLICO COUNTY TO DISPOSE OF PROPERTY BY PRIVATE SALE FOR FAIR MARKET VALUE.

The General Assembly of North Carolina enacts:

Section 1. Notwithstanding Article 12 of Chapter 160A of the General Statutes, the County of Pamlico may convey at private sale for fair market value the following described property:

In the Town of Bayboro, on the south side of North Street and on the west side of Second Street. BEGINNING at the intersection of the south line of North Street with the west line of Second Street and running thence South 08° 11' 31" West with the west line of Second Street 195.39 feet; thence North 83° 12' 28" West with a ditch centerline of

100.02 feet; thence North 08° 11' 36" East 199.28 feet to the south line of North Street; thence South 80° 58' 45" East with said street edge 100 feet to the point of BEGINNING, containing 45/100 of an acre, more or less, according to a map recorded in Map Cabinet "A" at Slide 26-10 in the Office of the Register of Deeds of Pamlico County.

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 19th day of June, 1987.

H.B. 641

CHAPTER 425

AN ACT TO REDEFINE THE NEWSPAPERS ELIGIBLE TO ACCEPT LEGAL ADVERTISING IN THE TOWNS OF MINT HILL, AND MATTHEWS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 1-597 reads as rewritten:

"§ 1-597. *Regulations for newspaper publication of legal notices, advertisements, etc.*--Whenever a notice of any other paper, document or legal advertisement of any kind or description shall be authorized or required by any of the laws of the State of North Carolina, heretofore or hereafter enacted, or by any order or judgment of any court of this State to be published or advertised in a newspaper, such publication, advertisement or notice shall be of no force and effect unless it shall be published in a newspaper with a general circulation ~~to actual paid subscribers~~ which newspaper at the time of such publication, advertisement or notice, shall have been admitted to the United States mails as second-class matter in the county or political subdivision where such publication, advertisement or notice is required to be published, and which shall have been regularly and continuously issued in the county in which the publication, advertisement or notice is authorized or required to be published, at least one day in each calendar week for at least 25 of the 26 consecutive weeks immediately preceding the date of the first publication of such advertisement, publication or notice; provided that in the event that a newspaper otherwise meeting the qualifications and having the characteristics prescribed by G.S. 1-597 to 1-599, should fail for a period not exceeding four weeks in any calendar year to publish one or more of its issues such newspaper shall nevertheless be deemed to have complied with the requirements of regularity and continuity of publication prescribed herein. Provided further, that in

the event the newspaper otherwise meeting the qualifications and having the characteristics prescribed by G.S. 1-597 to 1-599, is admitted to the United States mails as third class matter rather than second class matter, the newspaper shall qualify if it maintains a known office in the county or political subdivision where such publication, advertisement or notice is required to be published, is originated and published for the purpose of disseminating information of a public character, is not primarily designed for advertising purposes, does not contain more than seventy-five percent (75%) advertising in more than one-fourth of the issues published during the preceding six-month period. Provided further, that where any city or town is located in two or more adjoining counties, any newspaper published in such city or town shall, for the purposes of G.S. 1-597 to 1-599, be deemed to be admitted to the mails, issued and published in all such counties in which such town or city of publication is located, and every publication, advertisement or notice required to be published in any such city or town or in any of the counties where such city or town is located shall be valid if published in a newspaper published, issued and admitted to the mails anywhere within any such city or town, regardless of whether the newspaper's plant or known office or the post office where the newspaper is admitted to the mails is in such county or not, if the newspaper otherwise meets the qualifications and requirements of G.S. 1-597 to 1-599. This provision shall be retroactive to May 1, 1940, and all publications, advertisements and notices published in accordance with this provision since May 1, 1940, are hereby validated.

Notwithstanding the provisions of G.S. 1-599, whenever a notice or any other paper, document or legal advertisement of any kind or description shall be authorized or required by any of the laws of the State of North Carolina, heretofore or hereafter enacted, or by any order or judgment of any court of this State to be published or advertised in a newspaper qualified for legal advertising in a county and there is no newspaper qualified for legal advertising as defined in this section in such county, then it shall be deemed sufficient compliance with such laws, order or judgment by publication of such notice or any other such paper, document or legal advertisement of any kind or description in a newspaper published in an adjoining county or in a county within the same judicial district; provided, if the clerk of the superior court finds as a fact that such newspaper otherwise meets the requirements of this section and has a general circulation in such county where no newspaper is published meeting the requirements of this section."

Sec. 2. This act applies to the Towns of Mint Hill and Matthews only and only applies to notices or legal advertisements of those towns.

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 19th day of June, 1987.

H.B. 644

CHAPTER 426

AN ACT TO REDUCE THE NUMBER OF PUBLICATIONS REQUIRED FOR LOCAL STREET CLOSING HEARINGS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 160A-299(a) reads as rewritten:

"(a) When a city proposes to permanently close any street or public alley, the council shall first adopt a resolution declaring its intent to close the street or alley and calling a public hearing on the question. The resolution shall be published once a week for ~~four successive weeks prior to the hearing,~~ two successive calendar weeks in a newspaper having general circulation in the city. The resolution shall be published the first time not less than 10 nor more than 25 days before the date fixed for the hearing. In computing such period, the date of publication is not to be included, but the day of the hearing shall be included. In addition, a copy ~~thereof~~ of the resolution shall be sent by registered or certified mail to all owners of property adjoining the street or alley as shown on the county tax records, and a notice of the closing and public hearing shall be prominently posted in at least two places along the street or alley. If the street or alley is under the authority and control of the Department of Transportation, a copy of the resolution shall be mailed to the Department of Transportation. At the hearing, any person may be heard on the question of whether or not the closing would be detrimental to the public interest, or the property rights of any individual. If it appears to the satisfaction of the council after the hearing that closing the street or alley is not contrary to the public interest, and that no individual owning property in the vicinity of the street or alley or in the subdivision in which it is located would thereby be deprived of reasonable means of ingress and egress to his property, the council may adopt an order closing the street or alley. A certified copy of the order (or judgment of the court) shall be filed in the office of the register of deeds of the county in which the street, or any portion thereof, is located."

Sec. 2. This act applies to the Cities of Charlotte and Statesville only.

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 19th day of June, 1987.

AN ACT TO CLARIFY THE AUTHORITY OF THE OFFICERS OF
THE POLICE DEPARTMENT OF THE EASTERN BAND OF
THE CHEROKEE.

The General Assembly of North Carolina enacts:

Section 1. Article 13 of Chapter 160A of the North Carolina General Statutes with the exceptions contained herein, is hereby declared to be applicable to the Eastern Band of Cherokee Indians.

Sec. 2. For the purposes of the application of Article 13 of Chapter 160A of the North Carolina General Statutes, the following terms contained therein shall be construed as follows:

(a) "City" shall be construed to mean the Eastern Band of Cherokee Indians.

(b) "Council" or "governing body" shall be construed to mean the Tribal Council of the Eastern Band of Cherokee Indians.

(c) "City clerk" shall be construed to mean the clerk of the Tribal Council of the Eastern Band of the Cherokee Indians.

(d) "Corporate limits of the city" shall be construed to mean the boundaries of the trust lands of the Eastern Band of the Cherokee Indians wherever located within the State of North Carolina.

(e) "Law enforcement agency" or "local law enforcement agency" shall be construed to include the police department of the Eastern Band of the Cherokee Indians.

Sec. 3. Notwithstanding the provisions of G.S. 160A-286, the extraterritorial jurisdiction of the policeman of the police department of the Eastern Band of Cherokee Indians shall be:

(a) on all property owned by or leased to the Eastern Band of Cherokee Indians located within the trust lands of the Eastern Band of the Cherokee Indians.

(b) during the immediate and continuous flight of an offender in accordance with G.S. 15A-402(d).

Sec. 4. (a) Any person appointed or employed as Chief of Police, policeman, or auxiliary policeman shall, prior to the exercise of his authority pursuant to Article 13 of Chapter 160A of the North Carolina General Statutes, comply with the provisions of Chapter 17C of the North Carolina General Statutes and any rules or regulations adopted pursuant to the authority of Chapter 17C of North Carolina. The Courts of the State of North Carolina shall have the jurisdiction pursuant to G.S. 17C-11 to enjoin the police department of the Eastern Band of Cherokee Indians or any officer employed or appointed by said department from exercising any or all of the authority under color of State law conferred by Article 13 of Chapter

160A of the North Carolina general Statutes if any such officer of said department fails to meet the required standards established pursuant to Chapter 17C of the General Statutes of North Carolina.

(b) Service as chief of police, policeman, or auxiliary policeman pursuant to Article 13 of Chapter 160A of the North Carolina General Statutes with the police department of the Eastern Band of Cherokee Indians shall constitute service as a "criminal justice officer" as defined in G.S. 17C-2(c).

Sec. 5. Any police officer employed or appointed as chief of police, policeman, or auxiliary policeman of the police department of the Eastern Band of Cherokee Indians may be enjoined from exercising his authority under color of state law pursuant to Article 13 of Chapter 160A of the North Carolina General Statutes for the reasons set forth in G.S. 128-16 and pursuant to the provisions of Article 2 of Chapter 128 of the North Carolina General Statutes.

Sec. 6. Nothing contained herein or in Article 13 of Chapter 160A of the North Carolina General statutes shall be construed as limiting or revoking the authority of the Eastern Band of Cherokee Indians, the police department of the Eastern Band of Cherokee Indians or any of the officers or employees of either entity in the exercise of their inherent powers of self-government, or the exercise of authority conferred by federal law or regulation, or by common law.

Sec. 7. Nothing contained herein or in Article 13 of Chapter 160A of the North Carolina General Statutes shall be construed as modifying, either by way of enlargement or limitation, the jurisdiction of the Court of Indian Offenses for the Eastern Band of the Cherokee Indians.

Sec. 8. Nothing contained herein shall be construed as modifying, either by way of enlargement or limitation, the jurisdiction or authority of any federal, State, or local law enforcement agency, governmental entity, or any of their officers or employees, except the Eastern Band of Cherokee Indians, the police department of the Eastern Band of Cherokee Indians, and their officers and employees to the extent set forth herein.

Sec. 9. Service as a Chief of Police, or police officer of the police department of the Eastern Band of Cherokee Indians pursuant to Article 13 of Chapter 160A of the North Carolina General Statutes shall constitute service as a "law enforcement officer" for purposes of Article 12E of Chapter 143 of the North Carolina General Statutes. "Employer" as defined in Article 12E of Chapter 143 of the North Carolina General Statutes shall be construed to include the Eastern Band of Cherokee Indians with respect to the Chief of Police and

police officers of the Eastern Band of Cherokee Indians.

Sec. 10. G.S. 128-1.1(c) is hereby amended by inserting between the word "system" and the word "is" the following:

"or is commissioned as a special officer or deputy special officer of the United States Bureau of Indian Affairs".

Sec. 11. Chapter 566 of the 1969 Session Laws is hereby repealed.

Sec. 12. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 19th day of June, 1987.

H.B. 714

CHAPTER 428

AN ACT TO PROVIDE A PROCEDURE FOR THE
WITHDRAWAL OF A RIGHT-OF-WAY DEDICATED FOR A
FUTURE STREET.

The General Assembly of North Carolina enacts:

Section 1. G.S. 136-96 reads as rewritten:

"§ 136-96. *Road or street not used within 15 years after dedication deemed abandoned; declaration of withdrawal recorded; joint tenants or tenants in common; defunct corporations.*--Every strip, piece, or parcel of land which shall have been at any time dedicated to public use as a road, highway, street, avenue, or for any other purpose whatsoever, by a deed, grant, map, plat, or other means, which shall not have been actually opened and used by the public within 15 years from and after the dedication thereof, shall be thereby conclusively presumed to have been abandoned by the public for the purposes for which same shall have been dedicated; and no person shall have any right, or cause of action thereafter, to enforce any public or private easement therein, except where such dedication was made less than 20 years prior to April 28, 1953, such right may be asserted within one year from and after April 28, 1953; provided, that no abandonment of any such public or private right or easement shall be presumed until the dedicator or some one or more of those claiming under him shall file and cause to be recorded in the register's office of the county where such land lies a declaration withdrawing such strip, piece or parcel of land from the public or private use to which it shall have theretofore been dedicated in the manner aforesaid; provided further, that where the fee simple title is vested in tenants in common or joint tenants of any land embraced within the boundaries of any such road, highway, street, avenue or other land dedicated for public purpose whatsoever, as described in this section, any one or more of such tenants, on his own or their behalf and on the behalf of the others of such tenants,

may execute and cause to be registered in the office of the register of deeds of the county where such land is situated the declaration of withdrawal provided for in this section, and, under Chapter 46 of the General Statutes of North Carolina, entitled "Partition," and Chapter 1, Article 29A of the General Statutes of North Carolina, known as the "Judicial Sales Act," and on petition of any one or more of such tenants such land thereafter may be partitioned by sale only as between or among such tenants, and irrespective of who may be in actual possession of such land, provided further, that in such partition proceedings any such tenants in common or joint tenants may object to such withdrawal certificate and the court shall thereupon order the same cancelled of record; that where any corporation has dedicated any strip, piece or parcel of land in the manner herein set out, and said dedicating corporation is not now in existence, it shall be conclusively presumed that the said corporation has no further right, title or interest in said strip, piece, or parcel of land, regardless of the provisions of conveyances from said corporation, or those holding under said corporation, retaining title and interest in said strip, piece, or parcel of land so dedicated; the right, title and interest in said strip, piece, or parcel of land shall be conclusively presumed to be vested in those persons, firms or corporations owning lots or parcels of land adjacent thereto, subject to the provisions set out herein before in this section.

The provisions of this section shall have no application in any case where the continued use of any strip of land dedicated for street or highway purposes shall be necessary to afford convenient ingress or egress to any lot or parcel of land sold and conveyed by the dedicator of such street or highway. This section shall apply to dedications made after as well as before April 28, 1953.

The provisions of this section shall not apply when the public dedication is part of a future street shown on the street plan adopted pursuant to G.S. 136-66.2. Upon request, a city shall adopt a resolution indicating that the dedication described in the proposed declaration of withdrawal is or is not part of the street plan adopted under G.S. 136-66.2. This resolution shall be attached to the declaration of withdrawal and shall be registered in the office of the register of deeds of the county where the land is situated."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 19th day of June, 1987.

AN ACT TO MAKE TECHNICAL CORRECTIONS AND CLARIFY
THE POWERS AND DUTIES OF THE NORTH CAROLINA
MANUFACTURED HOUSING BOARD AND THE
COMMISSIONER OF INSURANCE.

The General Assembly of North Carolina enacts:

Section 1. Article 9A Chapter 143 of the General Statutes is amended by deleting the title, "Manufactured Housing and Mobile Homes, Part 1. North Carolina Manufactured Housing Board", and inserting in lieu thereof the title, "North Carolina Manufactured Housing Board - Manufactured Home Warranties."

Sec. 2. Chapter 143 of the General Statutes is amended by redesignating Part 2 of Article 9A as "Article 9B".

Sec. 3. Articles 9B, 9C, and 9D of Chapter 143 of the General Statutes are respectively redesignated as Articles 9C, 9D and 9E.

Sec. 4. G.S. 143-143.9(3) is amended by placing a period after "Commissioner" in the first line and deleting the rest of the subsection.

Sec. 5. G.S. 143-143.9(6) is amended by substituting "or" for "and" between "width" and "is".

Sec. 6. G.S. 143-143.10(b)(3) is rewritten to read:

"(3) To receive and resolve complaints from buyers of manufactured homes and from persons in the manufactured housing industry, in connection with the warranty, warranty service, licensing requirements or any other provision under this Article; and..."

Sec. 7. G.S. 143-143.10(b) is amended by adding a new section to read:

"(5) To file against the bond posted by a licensee for warranty repairs and service on behalf of a buyer."

Sec. 8. G.S. 143-143.15(a) is rewritten to read:

"(a) Manufactured homes shall be set up and anchored in accordance with the standards adopted by the Commissioner."

Sec. 9. G.S. 143-143.16(2)(b) and G.S. 143-143.16(4) are each amended by deleting the words "federal or State standards" and inserting in lieu thereof "standards adopted by the Commissioner."

Sec. 10. G.S. 143-145(7) is rewritten to read:

"(7) 'Manufactured home' means a structure, transportable in one or more sections, which in the traveling mode is eight body feet or more in width, or 40 body feet or more in length, or, when erected on site, is 320 or more square feet; and which is built on a permanent chassis and designed to be used as a dwelling, with or without permanent foundation when connected to the required utilities, including the plumbing, heating, air conditioning and electrical

systems contained therein. 'Manufactured home' includes any structure that meets all of the requirements of this subsection except the size requirements and with respect to which the manufacturer voluntarily files a certification required by the Secretary of the United States Department of Housing and Urban Development and complies with the standards established under the National Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C. §5401, et seq.

For manufactured homes built prior to June 15, 1976, 'manufactured home' means a portable manufactured housing unit designed for transportation on its own chassis and placement on a temporary or semipermanent foundation having a measurement of over 32 feet in length and over eight feet in width. 'Manufactured home' also means a double-wide manufactured home, which is two or more portable manufactured housing units designed for transportation on their own chassis that connect on site for placement on a temporary or semipermanent foundation having a measurement of over 32 feet in length and over eight feet in width."

Sec. 11. G.S. 143-146(a) is amended by adding to the end the following:

"This Article is intended to provide to the Commissioner all necessary authority to enable the State to obtain approval as a State Administrative Agency under the provisions of the National Manufactured Housing Construction and Safety Standards Act of 1974."

Sec. 12. G.S. 143-146(e) is rewritten to read:

"(e) The Commissioner is authorized to promulgate such rules as are necessary to carry out the provisions of this Article, including rules regarding consumer complaint procedures, and such other rules as are necessary to enable the State to assume responsibility for the enforcement of the National Manufactured Housing Construction and Safety Standards Act of 1974.

Sec. 13. G.S. 143-148 is rewritten to read:

"§ 143-148. *Certain structures excluded from coverage.*--The Commissioner may by rule provide for the exclusion of certain structures by certification in accordance with the National Manufactured Housing Construction and Safety Standards Act of 1974."

Sec. 14. G.S. 143-151.4 is amended by inserting between "such manufacturer;" and "in accordance" the following: "and correct such defect."

Sec. 15. G.S. 143-151.1 is amended by deleting the period at the end of the section and adding the following: ", stored or held for sale."

Sec. 16. G.S. 143-151.5(a)(6) is amended by substituting "G.S. 143-148" for "G.S. 143-148(c)".

Sec. 17. G.S. 143-143.18(c) is amended by rewriting the first sentence to read:

"A substantial defect shall be remedied within 45 days of the receipt of written notification from the claimant. If no written notification is given, the defect shall be remedied within 45 days of the mailing of notification by the Board, unless the claim is unreasonable or bona fide reasons exist for not remedying the defect within the 45-day period."

Sec. 18. G.S. 143-146, 143-151.1, 143-151.2 and 143-151.3 are amended by substituting "National Manufactured Housing Construction and Safety Standards Act of 1974" for either "National Mobile Home Construction and Safety Standards Act of 1974" or "Mobile Home Construction and Safety Standards Act of 1974".

Sec. 19. Articles 9A and 9B of Chapter 143 of the General Statutes, as designated by this act, are amended by substituting "Article" for "Part" wherever it appears.

Sec. 20. In the event any provision of this act is held to be invalid by any court of competent jurisdiction, the court's holding as to that provision shall not affect the validity or operation of other provisions of this act; and to that end the provisions of this act are severable.

Sec. 21. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 19th day of June, 1987.

H.B. 780

CHAPTER 430

AN ACT TO AMEND THE LAW REGULATING THE PRACTICE OF FUNERAL SERVICE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 90-210.18(c)(9) is rewritten to read:

"(9)

a. Election shall be determined by a majority of the votes cast. As used in this subdivision 'category I' refers to the seat held by a funeral service licensee or a person holding both a funeral director's license and an embalmer's license, and 'category II' refers to the seat held by a funeral director or a funeral service licensee. A majority shall be determined:

1. In an election to fill one seat in category I and one seat in category II, and if there are two or more candidates for a category, the majority shall be determined by dividing the

- total vote cast for all candidates in the category by two. An excess of the sum so ascertained shall be a majority.
2. In an election to fill two seats in the same category, and if there are more than two candidates, the majority shall be determined by dividing the total vote cast for all candidates by two and by dividing the result by two. Any excess of the sum so ascertained shall be a majority. If more than two candidates obtain a majority the two having the highest vote shall be declared elected.
- b. If there is a failure to obtain a majority of the votes cast for any seat the following procedures shall apply:
1. In an election to fill one seat in category I and one seat in category II, and if no candidate receives a majority in a category, the candidate receiving the highest number of votes in that category shall be declared elected unless the candidate receiving the second highest number of votes, within 10 days of having been notified by the Board of the vote total, shall request a second election. In the second election, the names of the candidates who received the highest and the next highest number of votes shall appear on the ballot.
 2. In an election to fill two seats in the same category, and if no candidate receives a majority, the two candidates receiving the highest number of votes shall be declared elected unless the candidate receiving the next highest number of votes, within 10 days of having been notified by the Board of the vote total, shall request a second election. In the second election the names of the two candidates who received the highest number of votes in the first election and the name of the candidate who received the next highest number of votes shall appear on the ballot, and the two candidates who receive the highest number of votes in the second election shall be declared elected. If in the first election only one candidate fails to receive a majority, the candidate receiving the highest number of votes, but not a majority, shall be declared elected unless the candidate receiving the next highest number of votes, within 10 days of having been notified by the Board of the vote total, shall request a second election. In the second election the name of the candidate who received the highest number of votes, but not a majority, in the first election and the name of the candidate who received the next highest number of votes shall appear on the ballot, and the candidate who receives

the higher number of votes in the second election shall be declared elected.

- c. In any election if there is a tie between candidates the tie shall be resolved by a vote of the Board, provided that if a member of the Board is one of the candidates in the tie he may not participate in such vote."

Sec. 2. G.S. 90-210.20 is amended by adding two subdivisions to read:

"(1) '(c1) 'Dead human bodies', as used in this Article includes fetuses beyond the second trimester and the ashes from cremated bodies.'

(2) '(e1) 'Funeral chapel' means a chapel or other facility separate from the funeral establishment premises for the reposing of dead human bodies, visitation or funeral ceremony, which is owned, operated, or maintained by a funeral establishment, and which does not use the word 'funeral' in its name, on a sign, in a directory, in advertising or in any other manner; in which or on the premises of which there is not displayed or offered for sale any caskets or other funeral merchandise; in which or on the premises of which there is not located any funeral business office or a preparation room; in which or on the premises of which no funeral sales, financing, or arrangements are made; and which no owner, operator, employee, or agent thereof represents the chapel to be a funeral establishment.'"

Sec. 3. G.S. 90-210.21 is repealed.

Sec. 4. G.S. 90-210.25(a)(1)c. is rewritten to read:

"c. Have completed a minimum of 32 semester hours or 48 quarter hours of instruction in a course of study including the subjects set out in items e.1. and 2. of this subsection in a mortuary science college approved by the Board, or be a graduate of a mortuary science college approved by the Board."

Sec. 5. G.S. 90-210.25(a)(1)e.2. is rewritten to read:

"e. 2. Funeral service administration, including accounting, psychology, funeral principles and directing, and."

Sec. 6. G.S. 90-210.25(a)(3)e.3. is rewritten to read:

"e. 3. Funeral service administration, including accounting, psychology, funeral principles and directing, and".

Sec. 7. G.S. 90-210.25(a)(4) is amended by adding the following sub-subdivisions, at the end:

"j. The Board shall not register a resident trainee unless it is shown that the funeral establishment where he is to be employed had at least 35 funerals during the 12 months immediately preceding the date of the application.

k. The Board shall not register more than one resident trainee for each 150 funerals had by the funeral establishment during the 12 months immediately preceding the date of the application."

Sec. 8. The third paragraph of G.S. 90-210.25(a)(5) is rewritten to read:

"The holder of any license issued by the Board who shall fail to renew the same on or before January 31 of the calendar year for which the license is to be renewed shall have forfeited and surrendered the license as of that date. No license forfeited or surrendered pursuant to the preceding sentence shall be reinstated by the Board unless it is shown to the Board that the applicant has, throughout the period of forfeiture, engaged full time in another state of the United States or the District of Columbia in the practice to which his North Carolina license applies and has completed for each such year continuing education substantially equivalent in the opinion of the Board to that required of North Carolina licensees; or has completed in North Carolina a total number of hours of accredited continuing education computed by multiplying five times the number of years of forfeiture; or has passed the North Carolina examination for the forfeited license. No additional resident traineeship shall be required. The applicant shall be required to pay all delinquent annual renewal fees and a reinstatement fee. The Board may waive the provisions of this section for an applicant for a forfeiture which occurred during his service in the armed forces of the United States provided he applies within six months following severance therefrom."

Sec. 9. G.S. 90-210.25(d)(1) is amended by adding the following, at the end:

"Each funeral establishment at a specific location shall be deemed to be a separate entity and shall require a separate permit and compliance with the requirements of this Article."

Sec. 10. G.S. 90-210.25(d)(2)a. is amended by adding the following, at the end:

"who shall not be permitted to manage more than one funeral establishment,".

Sec. 11. G.S. 90-210.25(d)(2)c. is rewritten to read:

"c. It is shown that the funeral establishment satisfies the requirements of G.S. 90-210.27A, and".

Sec. 12. G.S. 90-210.27 is repealed.

Sec. 13. Chapter 90 of the General Statutes is amended by adding a new section to read:

"§ 90-210.27A. *Funeral establishments.*--(a) Every funeral establishment shall contain a preparation room which is strictly private, of suitable size for the embalming of dead bodies. Each preparation room shall:

- (1) Contain one standard type operating table;
- (2) Contain facilities for adequate drainage;
- (3) Contain a sanitary waste receptacle;
- (4) Contain an instrument sterilizer;
- (5) Have wall-to-wall floor covering of tile, concrete, or other material which can be easily cleaned;
- (6) Be kept in sanitary condition and subject to inspection by the Board or its agents at all times;
- (7) Have a placard or sign on the door indicating that the preparation room is private; and
- (8) Have a proper ventilation or purification system to maintain a nonhazardous level of airborne contamination.

(b) No one is allowed in the preparation room while a dead human body is being prepared except licensees, resident trainees, public officials in the discharge of their duties, members of the medical profession, officials of the funeral home, next of kin, or other legally authorized persons.

(c) Every funeral establishment shall contain a repose room for dead human bodies, of suitable size to accommodate a casket and visitors.

(d) No person who has been convicted of a felony shall:

- (1) Own a funeral establishment if it is owned by a sole proprietorship;
- (2) Be a partner in a funeral establishment if it is owned by a partnership;
- (3) Be an officer, member of the board of directors or owner of twenty-five percent (25%) or more of the stock if it is owned by a corporation.

(e) If a funeral establishment is solely owned by a natural person, that person must be licensed by the Board as a funeral director or a funeral service licensee. If it is owned by a partnership, at least one partner must be licensed by the Board as a funeral director or a funeral service licensee. If it is owned by a corporation, the president, vice-president, or the chairman of the board of directors must be licensed by the Board as a funeral director or a funeral service licensee. The licensee required by this subsection must be actively engaged, on a day-to-day basis, in the operation of the funeral establishment.

(f) If a funeral establishment uses the name of a living person in the name under which it does business, that person must be licensed by the Board as a funeral director or a funeral service licensee.

(g) No funeral establishment shall own, operate, or maintain a funeral chapel without first having registered the name, location, and ownership thereof with the Board."

Sec. 14. Section 4 of this act shall not affect persons who are, on the effective date of this act, registered as resident trainees or students enrolled in a course of study pursuant to the requirements of G.S. 90-210.25(a)(1)c. as those requirements existed before being amended by this act. Section 7 of this act shall not affect persons who are, on the effective date of this act, registered resident trainees, their employers or licensed sponsors. Section 10 and the first sentence of paragraph (a) and all of paragraphs (c), (d), (e), and (f) of Section 13 of this act shall not affect funeral establishments which hold an establishment permit on the effective date of this act; provided, however, such exemptions shall not apply after the sale of a controlling interest in a funeral establishment.

Sec. 15. G.S. 90-210.31 is amended by adding a new subsection to read:

"(dl) This Article does not apply to pre-need burial contracts or pre-arrangements for funeral services or merchandise funded, at the direction of the purchaser, with the proceeds of any insurance policy regulated by Chapter 58 of the General Statutes."

Sec. 16. This act is effective upon ratification and Section 15 of this act shall expire on July 1, 1989.

In the General Assembly read three times and ratified this the 19th day of June, 1987.

S.B. 27

CHAPTER 431

AN ACT TO REPEAL THE CHARTER OF THE DANIELTOWN VOLUNTEER FIRE DEPARTMENT, INC.

The General Assembly of North Carolina enacts:

Section 1. The charter of the Danieltown Volunteer Fire Department, Inc. is repealed.

Sec. 2. This act is effective upon ratification, provided that the corporation shall continue in existence for 10 days for the sole purpose of disposing of its assets as provided in any contract of the corporation. Such assets do not escheat because of this act.

In the General Assembly read three times and ratified this the 23rd day of June, 1987.

AN ACT PROVIDING FOR THE ELECTION OF THE PITT COUNTY BOARD OF COMMISSIONERS.

The General Assembly of North Carolina enacts:

Section 1. Effective on the first Monday in December of 1988, the Pitt County Board of Commissioners shall consist of nine members serving four-year terms. One member shall be nominated and elected from each of the six districts described in Section 2 of this act, and only voters who reside in the district may vote in the primaries and elections for that district. The remaining three members shall be nominated and elected from the county at-large, and all the qualified voters of the county may vote in the primaries and elections for those three seats.

Sec. 2. The six election districts shall be as follows:

District One. The portion of the City of Greenville included within the following boundaries, running clock-wise from the northwest corner of the district: 5th Street from the intersection with Memorial Drive east to Contentnea Avenue, Contentnea north to the Tar River, the Tar River east to Summit Street, Summit south to 1st Street, 1st west to Reade Street, Reade south to 4th Street, 4th east to Summit, Summit south to 5th Street, 5th east to the eastern edge of the East Carolina University campus (between Meade and Maple streets), south along the eastern edge of the campus to 14th Street, 14th west to the western edge of the campus (between College Hill Drive and East Rock Spring Road), north along that western edge of the campus to 10th Street, 10th west to Evans Street, Evans south to Green Mill Run, Green Mill Run southwest to the Seaboard Coastline Railroad tracks, the tracks south to Highway 264 Bypass, 264 Bypass west to Hooker Road, Hooker north to Green Mill Run, Green Mill Run west to Memorial Drive, Memorial Drive north to 5th Street.

District Two. All of Belvoir, Bethel and Carolina townships; the portion of Greenville Township outside the City of Greenville, north and east of the Tar River and west of Pactolus Township (census enumeration districts 263A, 264 and 265); all of the City of Greenville north of the Tar River; and that part of the City of Greenville bordered on the north by the Tar River, on the south by 5th Street, on the east by Contentnea Avenue, and on the west by the city limits (blocks 201-247 of Block Group 2 in census district 9902 and blocks 201-212 in Block Group 2 in census district 9905).

District Three. All of Grimesland and Pactolus townships; the portion of Greenville Township east of the city of Greenville and south of Pactolus Township (census enumeration district 262); and the part of the City of Greenville south of the Tar River and north of the following boundary, running from west to east: Summit Street from the Tar River south to 1st Street, 1st west to Reade Street, Reade south to 4th Street, 4th east to Summit, Summit south to 5th Street, 5th east to the eastern edge of the East Carolina University campus (between Meade and Maple streets), south along the eastern edge of the campus to 14th Street, 14th east to Ragsdale Road, Ragsdale north to Wright Road, Wright north to 10th Street, 10th east to River Bluff Road.

District Four. All of Falkland, Fountain, Farmville and Arthur townships; the portion of Greenville Township south of the Tar River and west of the City of Greenville (census enumeration district 266A); and the part of the City of Greenville west of Memorial Drive and south of 5th Street.

District Five. All of Winterville Township except the portion in District Six, and the parts of the City of Greenville not in any other district.

District Six. All of Ayden, Grifton, Swift Creek and Chicod townships and the portion of Winterville Township north of Highway 43 (census enumeration districts 277T and 277U).

Sec. 3. The members to be elected from districts 1, 2 and 4 shall be elected in 1988 and quadrennially thereafter.

Sec. 4. The three members to be elected at-large shall be elected in 1988 and quadrennially thereafter.

Sec. 5. The members to be elected from districts 3, 5 and 6 shall be elected in 1990 and quadrennially thereafter.

Sec. 6. The current six members of the Board are entitled to serve the remainder of their terms, three of which are due to expire in 1988 and three of which are due to expire in 1990. Following the 1988 election, each member whose term is not due to expire until 1990 shall be assigned to the seat for the district in which he resides, unless he has chosen to run for and has been elected to one of the at-large seats. The three members whose terms are not due to expire until 1990, and the districts in which they reside, are as follows: Thomas Johnson, District 3; Kenneth Dews, District 5; and Charles McLawhorn, District 6. If any of those members chooses to run for and is elected to one of the at-large seats in 1988, the resulting vacancy in the seat expiring in 1990 shall be filled by the Board with a resident of that district.

Sec. 7. Vacancies on the Board shall be filled in the manner provided by law.

Sec. 8. Each year, in the manner provided by law, the Board shall elect one member as chairman.

Sec. 9. The following local acts concerning the method of electing the Pitt County Board of Commissioners are repealed: Chapter 778 of the 1967 Session Laws, Chapter 250 of the 1955 Session Laws, Chapter 823 of the 1953 Session Laws, and Chapter 107 of the Public-Local Laws of 1935.

Sec. 10. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 19th day of June, 1987.

H.B. 876

CHAPTER 433

AN ACT TO VEST TITLE TO ABANDONED RAILROAD
EASEMENTS IN ADJOINING PROPERTY OWNERS.

The General Assembly of North Carolina enacts:

Section 1. Chapter 1 of the General Statutes is amended by adding a new section to read:

" § 1-44.2. *Presumptive ownership of abandoned railroad easements.--*

(a) Whenever a railroad abandons a railroad easement, all right, title and interest in the strip, piece or parcel of land constituting the abandoned easement shall be presumed to be vested in those persons, firms or corporations owning lots or parcels of land adjacent to the abandoned easement, with the presumptive ownership of each adjacent landowner extending to the centerline of the abandoned easement. In cases where the railroad easement adjoins a public road right-of-way, the adjacent property owner's right, title and interest in the abandoned railroad easement shall extend to the nearest edge of the public road right-of-way.

The side boundaries of each parcel so presumptively vested in the adjacent property owner shall be determined by extending the side property lines of the adjacent parcels to the centerline of the abandoned easement, or as the case may be, the nearest edge of the public road right-of-way. In the event the side property lines of two adjacent property owners intersect before they meet the centerline or nearest edge of the public road right-of-way, as the case may be, such side property lines shall join and run together from the point of intersection to the centerline of the easement or nearest edge of the public road right-of-way, as the case may be, perpendicular to said centerline or edge.

(b) Persons claiming ownership contrary to the presumption established in this section shall have a period of one year from the date of enactment of this statute or the abandonment of such easement, whichever later occurs, in which to bring any action to establish their ownership. The presumption established by this section is rebuttable by showing that a party has good and valid title to the land.

(c) This section has no application to railroad easements which were granted to a corporation by charter, condemnation, deed or other instrument occurring or dated prior to the adoption of the North Carolina Constitution of 1868."

Sec. 2. This act is effective upon ratification, but shall not apply to pending litigation.

In the General Assembly read three times and ratified this the 19th day of June, 1987.

H.B. 1219

CHAPTER 434

AN ACT TO PERMIT NONPROFIT ORGANIZATIONS AND POLITICAL ORGANIZATIONS TO OBTAIN PERMITS FOR THE SALE OF MIXED BEVERAGES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 18B-1001(10) is amended by changing the final period to a semicolon and adding:

"f. Nonprofit and political organizations."

Sec. 2. G.S. 18B-1002(a) is amended by adding:

"(5) A permit may be issued to a nonprofit organization or a political organization to serve wine, malt beverages, and spirituous liquor at a ticketed event held to allow the organization to raise funds. For purposes of this subdivision 'nonprofit organization' means an organization that is exempt from taxation under Section 501(c)(3), 501(c)(4), 501(c)(8), 501(c)(10), 501(c)(19), or 501(d) of the Internal Revenue Code and is exempt under similar provisions of the General Statutes as a bona fide nonprofit charitable, civic, religious, fraternal, patriotic, or veterans' organization or as a nonprofit volunteer fire department, or as a nonprofit volunteer rescue squad or a bona fide homeowners' or property owners' association. For purposes of this subdivision 'political organization' means an organization covered by the provisions of G.S. 163-96(a)(1) or (2) or a campaign organization established by or for a person who is a candidate who has filed a notice of candidacy, paid the filing fees or filed the required petition, and been certified as a candidate for one of the offices listed in G.S. 163-1. The issuance of this permit will also allow the issuance of a purchase-transportation permit under G.S. 18B-403 and 18B-404 and

the use for culinary purposes of spirituous liquor lawfully purchased for use in mixed beverages."

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 19th day of June, 1987.

H.B. 1272

CHAPTER 435

AN ACT TO CLARIFY THE LAW REGARDING SANITARY SEWAGE SYSTEM LAW AND CHEMICAL TOILETS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 130A-334(11) reads as rewritten:

"(11) 'Sanitary sewage system' means a complete system of sewage collection, treatment and disposal including approved privies, septic tank systems, connection to public or community sewage systems, sewage reuse or recycle systems, mechanical or biological treatment systems, or other such systems.

Properly managed chemical toilets used only for human waste at mass gatherings, construction sites and labor work camps are considered sanitary sewage systems."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 19th day of June, 1987.

H.B. 1790

CHAPTER 436

AN ACT REGARDING THE SALE OF HOGS BY TELECONFERENCE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 106-408 reads as rewritten:

"§ 106-408. *Marketing facilities prescribed; records of purchases and sales; time of sales; notice.*--All public livestock markets operating under this Article shall have proper facilities for handling livestock and such other equipment as specified by regulation of the North Carolina Board of Agriculture. Scales approved by the North Carolina Division of Weights and Measures shall be provided at public livestock markets where animals are bought, sold or exchanged by weight. The premises, including yards, pens, alleys, and chutes shall be cleaned and disinfected in accordance with regulations promulgated by the Board of Agriculture pursuant to the authority contained in G.S. 106-416. The market shall keep a complete legible permanent record, including the use of numbered invoices, showing the name

and address of the person or firm from whom all animals are received and the name and address of the person or firm to whom sold. Symbols in lieu of names shall not be used. The weight, if sold by weight, and the price paid and the price received shall be recorded on the invoice. Such records as specified in this section shall be available for inspection to the Commissioner of Agriculture or his authorized representative during regular business hours.

The sales of all livestock at livestock auction markets shall start no later than 2:00 P.M.; provided, however, the Commissioner of Agriculture shall have authority to authorize a sale to begin as late as 4:00 P.M. when the sale (i) consists solely of the sale of pigs weighing no more than 150 pounds and sold as feeder pigs, (ii) continues without interruption, and (iii) ~~last—~~ lasts later than 5:00 P.M., or when the sale consists solely of slaughter hogs sold by teleconference. The sale of livestock shall be continuous until all are sold.

Each public livestock market operator operating under this Article shall post notice of the day(s) of sale and the starting time in a conspicuous place on the market premises. In the event of subsequent changes in day of sale or starting time, the operator shall post notice on the premises and notify the State Veterinarian in writing at least two weeks in advance of the date of change."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 19th day of June, 1987.

S.B. 114

CHAPTER 437

AN ACT TO SPECIFY AN ADDITIONAL REQUIREMENT APPLICABLE TO THE PERMITTING OF ANY COMMERCIAL HAZARDOUS WASTE TREATMENT FACILITY FOR THE PURPOSE OF PROTECTING PUBLIC HEALTH.

The General Assembly of North Carolina enacts:

Section 1. Article 9 of Chapter 130A of the General Statutes is amended by adding a new section to read:

" § 130A-295.01. *Additional requirement for commercial hazardous waste treatment facilities.*--(a) As used in this section:

- (1) 'Commercial hazardous waste treatment facility' means any hazardous waste treatment facility which accepts hazardous waste from the general public or from another person for a fee, but does not include any facility owned or operated by a generator of hazardous waste solely for his own use, and does not include any facility owned by the State or by any

agency or subdivision thereof solely for the treatment of hazardous waste generated by agencies or subdivisions of the State;

- (2) 'New', when used in connection with 'facility', refers to a planned or proposed facility, or a facility which has not been placed in operation, but does not include facilities which have commenced operations as of the date this section became effective, including facilities operated under interim status;
- (3) 'Modified', when used in connection with 'permit', means any change in any permit in force on or after the date this section becomes effective which would either expand the scope of permitted operations, or extend the expiration date of the permit, or otherwise constitute a major modification of the permit as defined in Title 40, Part 270.41 of the Code of Federal Regulations (1 July 1986); and
- (4) '7Q10 conditions', when used in connection with 'surface water', refers to the minimum average flow for a period of seven consecutive days that has an average occurrence of once in 10 years as referenced in 15 NCAC 2B .0206(a)(3) as adopted February 1, 1976.

(b) No permit for any new commercial hazardous waste treatment facility shall be issued or become effective, and no permit for a commercial hazardous waste treatment facility shall be modified, until the applicant has satisfied the Department that such facility meets, in addition to all other applicable requirements, the following requirements:

- (1) The facility shall not discharge directly a hazardous or toxic substance into a surface water that is upstream from a public drinking water supply intake in North Carolina, unless there is a dilution factor of 1000 or greater at the point of discharge into the surface water under 7Q10 conditions.
- (2) The facility shall not discharge indirectly through a publicly owned treatment works (POTW) a hazardous or toxic substance into a surface water that is upstream from a public drinking water supply intake in North Carolina, unless there is a dilution factor of 1000 or greater, irrespective of any dilution occurring in a wastewater treatment plant, at the point of discharge into the surface water under 7Q10 conditions."

Sec. 2. The provisions of this act are severable. If the Administrator of the United States Environmental Protection Agency concludes; pursuant to the Solid Waste Disposal Act, as amended by

the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. § 6926; and Title 40, Part 271, Code of Federal Regulations §§ 271.22 and .23, or in accordance with other applicable law and regulations; that any provision of this act will result in the withdrawal of approval of the North Carolina hazardous waste program, such provision is void. The Secretary, his designee, or other State official shall, upon receipt of notice of a decision by the Administrator that any provision of this act will result in withdrawal of program approval, certify to the Secretary of State that such provision is void. In the event that any provision of this act is voided pursuant to this section, it shall be revived only upon a subsequent reversal by the Administrator of his decision based on his determination that such provision is not in conflict with Environmental Protection Agency requirements for State program approval, or upon a reversal of the Administrator's initial decision by administrative or judicial review. The voiding of any provision of this act shall not affect other provisions of the act which can be given effect without the voided provision.

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 22nd of June, 1987.

S.B. 230

CHAPTER 438

AN ACT TO MAKE CLARIFYING CHANGES IN THE PERMITTING REQUIREMENTS FOR MEAT MARKETS AND FOOD AND LODGE FACILITIES.

The General Assembly of North Carolina enacts:

Section 1. G.S. Chapter 130A-228 is amended by redesignating the present text as "(a)" and adding a paragraph "(b)" as follows:

"(b) No market shall commence or continue operation that does not have a permit issued by the Department. The permit shall be issued to the owner or operator of the market and shall not be transferable. A permit shall be issued only when the market satisfies all of the requirements of the rules. A permit shall be immediately revoked in accordance with G.S. 130A-23(d) for failure of the market to maintain a minimum grade of C. A permit may otherwise be suspended or revoked in accordance with G.S. 130A-23."

Sec. 2. G.S. 130A-248(b) is amended by deleting the last sentence and substituting "A permit shall be immediately revoked in accordance with G.S. 130A-23(d) for failure of the facility to maintain a minimum grade of C. A permit may otherwise be suspended or

revoked in accordance with G.S. 130A-23."

Sec. 3. G.S. 130A-23(d) is rewritten as follows:

"(d) A permit shall be suspended or revoked immediately if a violation of the Chapter, the rules or a condition imposed upon the permit presents an imminent hazard. Also, a permit issued pursuant to G.S. 130A-228 or 130A-248 shall be revoked immediately for failure of a market or a facility to maintain a minimum grade of C. The Secretary shall immediately give notice of the suspension or revocation and shall immediately file a petition for a contested case in accordance with G.S. 150B-23."

Sec. 4. This act shall be effective upon ratification.

In the General Assembly read three times and ratified this the 22nd day of June, 1987.

S.B. 30

CHAPTER 439

AN ACT TO ALLOW THE LEGISLATIVE ETHICS COMMITTEE TO CHOOSE MORE THAN ONE METHOD OF DISPOSING OF A MATTER AFTER ITS INQUIRY INTO ALLEGED VIOLATIONS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 120-103(d) is amended by deleting "one of the following ways", and substituting "one or more of the following ways".

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 22nd day of June, 1987.

S.B. 45

CHAPTER 440

AN ACT TO FACILITATE THE EXCHANGE OF INFORMATION BY THE DEPARTMENT OF REVENUE AND LOCAL TAX OFFICIALS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-289 is amended as follows:

(1) by deleting the words "county and municipal" in subdivision (d)(1) and substituting the word "local";

(2) by rewriting subsection (e) to read:

"(e) The Department of Revenue may furnish the following information to a local tax official:

(1) Information contained in a report to it or to any other State department; and

- (2) Information the Department has in its possession that may assist a local tax official in securing complete tax listings, appraising or assessing taxable property, collecting taxes, or presenting information in administrative or judicial proceedings involving the listing, appraisal, or assessment of property.

A local tax official may use information obtained from the Department under this subsection only for the purposes stated in subdivision (2). A local tax official may not divulge or make public this information except as required in administrative or judicial proceedings under this Subchapter. A local tax official who makes improper use of or discloses information obtained from the Department under this subsection is punishable as provided in G.S. 105-259.

The Department may not furnish information to a local tax official pursuant to this subsection unless it has obtained a written certification from the official stating that he is familiar with the provisions of both this subsection and G.S. 105-259 and that information obtained from the Department under this subsection will be used only for the purposes stated in subdivision (2)."; and

- (3) by rewriting subsection (f) to read:

"(f) To advise local tax officials of their duties concerning the listing, appraisal, and assessment of property and the levy and collection of property taxes."

Sec. 2. G.S. 105-273 is amended by adding a new subdivision (11) to read as follows and by renumbering the succeeding subdivisions accordingly:

"(11) 'Local tax official' includes a county assessor, an assistant county assessor, a member of a county board of commissioners, a member of a county board of equalization and review, a county tax collector, and the municipal equivalents of these officials."

Sec. 3. G.S. 105-289.1(b) is amended by deleting the phrase "taxing authority (as defined in G.S. 105-289(e))" and substituting the words "tax official".

Sec. 4. G.S. 105-259 is amended as follows:

(1) by deleting subpart (ii) in the first sentence of that section and inserting two new subparts to read:

"(ii) local tax officials, as defined in G.S. 105-273, and former local tax officials; (iii) members and former members of the Property Tax Commission;"

(2) by renumbering subparts (iii) and (iv) of the first sentence of that section as (iv) and (v) respectively; and

(3) by deleting the word "authority" each time it appears in the first sentence of the fourth paragraph of that section and substituting the word "official".

Sec. 5. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 22nd day of June, 1987.

S.B. 464

CHAPTER 441

AN ACT TO MAKE CORRECTIONS TO AND IMPROVEMENTS IN LAWS DEALING WITH COMMERCIAL PROPERTY AND LIABILITY INSURANCE; AND TO AMEND THE LOCAL GOVERNMENT RISK POOL ACT TO PROVIDE FOR COMPREHENSIVE FINANCIAL MONITORING OF POOLS BY THE COMMISSIONER OF INSURANCE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 58-472(a) is amended by deleting the word "nor", changing the period to a semicolon in the last phrase, and by adding the following:

"to any town or county farmers mutual fire insurance association restricting its operations to not more than five counties in this State that are adjacent to the county in which its home office is located; nor to domestic insurance companies, associations, orders, or fraternal benefit societies doing business in this State on the assessment plan."

Sec. 2. G.S. 58-472(a) is amended by substituting for "to marine and" the following: "to marine insurance as defined in G.S. 58-131.36(3); to".

Sec. 3. G.S. 58-474 is amended in the catch line by inserting "rate" between "premium" and "increase".

Sec. 4. G.S. 58-474 is amended by redesignating subsections (d) and (e) as subsections (e) and (f) and by adding a new subsection (d) to read:

"(d) Except as provided in G.S. 58-475, whenever an insurer lowers coverage limits or raises deductibles or premium rates other than at the request of the policyholder, the insurer shall give the policyholder written notice of such change at least 30 days in advance of the effective date of the change."

Sec. 5. G.S. 58-475 is amended in the catch line by inserting "rate" between "premium" and "or".

Sec. 6. G.S. 58-475(a) is amended by adding a sentence at the end to read:

"This section applies only if the insurer intends to decrease coverage, increase deductibles, or increase the premium rate in the renewal policy."

Sec. 7. G.S. 58-480(a) and (b) are each amended by rewriting the text of the first two lines to read:

"With the exception of inland marine insurance that is not written according to manual rates and rating plans,".

Sec. 8. G.S. 58-131.39(a) is amended by rewriting the text of the first two lines to read:

"With the exception of inland marine insurance that is not written according to manual rates and rating plans, every admitted".

Sec. 9. G.S. 58-480(b) is amended by adding a sentence, at the end, to read:

"Any filing may become effective on a date earlier than that specified in this subsection upon agreement between the Commissioner and the filer."

Sec. 10. G.S. 58-480(c) is amended by adding a sentence, at the end, to read:

"The filer may then remedy the defects in the filing. An otherwise defective filing thus remedied shall be deemed to be a proper filing, except that all periods of time specified in this Article will run from the date the Commissioner receives additional or amended documents necessary to remedy all material defects in the filing."

Sec. 11. G.S. 58-131.44(a) is amended by inserting between "has" and "filed" the following: "obtained a license from and".

Sec. 12. G.S. 58-131.45(a) is amended by inserting between "shall" and "file" the following: "obtained a license from and".

Sec. 13. G.S. 58-131.53 is amended by substituting "G.S. 58-9.2 or 58-9.7" for "G.S. 58-131.54".

Sec. 14. G.S. 58-491 is amended by adding a new sentence, at the end, to read:

"Such local governments shall give the Commissioner 30 days' advance written notification, in a form prescribed by the Commissioner, that they intend to organize and operate risk pools pursuant to this Article."

Sec. 15. G.S. 58-495 is amended by rewriting the catch line to read:

"Financial monitoring and evaluation of pools" and by rewriting the third, fourth, and fifth sentences to read:

"The provisions of G.S. 58-16, 58-17, 58-18, 58-21, 58-22, 58-25, 58-25.1, 58-27, and 58-63 apply to each pool and to persons that administer pools for local governments. Annual financial statements required by G.S. 58-21 shall be filed by each pool within 60 days after the end of the pool's fiscal year."

Sec. 16. G.S. 58-496(a) is amended by rewriting the second sentence to read:

"If the pool fails to comply with the recommendations within 30 days after the date of the notice, the Commissioner may apply to the

Superior Court of Wake County for an order requiring the pool to abate the deficiency and authorizing the Commissioner to appoint one or more special deputy commissioners, counsel, clerks, or assistants to oversee the implementation of the Court's order. The compensation and expenses of such persons shall be fixed by the Commissioner, subject to the approval of the Court, and shall be paid out of the funds or assets of the pool."

Sec. 17. G.S. 58-496(b) is amended by rewriting the last sentence to read:

"Members of a pool may, by contract, agree to limit the assessment to the amount of each member's annual contribution to the pool. Such a contractual agreement shall not impair the authority granted the Commissioner by this section."

Sec. 18. G.S. 58-498 is amended by substituting "Articles 3 and 4" for "Article 3".

Sec. 19. Sections 3 and 4 of this act shall become effective August 1, 1987. The remaining sections of this act are effective upon ratification.

In the General Assembly read three times and ratified this the 22nd day of June, 1987.

S.B. 510

CHAPTER 442**AN ACT TO TRANSFER RESPONSIBILITY FOR LICENSING AND SUPERVISION OF PROPRIETARY SCHOOLS FROM THE STATE BOARD OF EDUCATION TO THE STATE BOARD OF COMMUNITY COLLEGES.**

The General Assembly of North Carolina enacts:

Section 1. Article 40 of Chapter 115C of the General Statutes of North Carolina is amended by deleting the words "State Board of Education" wherever these words appear in the Article and replacing them with the words "State Board of Community Colleges." The Article is further amended by deleting the words "Superintendent of Public Instruction" wherever these words appear in the Article and replacing them with the words "President of the Department of Community Colleges."

Sec. 2. Article 40 of Chapter 115C, as amended by Section 1 of this act, is transferred to Chapter 115D of the General Statutes of North Carolina to become Article 8 of that Chapter and is recodified as necessary for purposes of this transfer.

Sec. 3. Nothing in this act shall be construed to mean that proprietary schools as defined in Article 40 of Chapter 115C and transferred to Chapter 115D by this act shall become community

colleges or technical institutes or part of the Community College System, except for licensing and supervision. Specific authorization by the General Assembly shall be required before any proprietary school shall become a community college or technical institute or part of the Community College System.

Sec. 4. This act shall become effective July 1, 1987.

In the General Assembly read three times and ratified this the 22nd day of June, 1987.

S.B. 545

CHAPTER 443

AN ACT TO PERMIT ABC PERMITS TO BE ISSUED IN CERTAIN UNINCORPORATED AREAS OF THE STATE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 18B-101 is amended by adding a new subdivision (16) to read as follows:

"(16) 'Unincorporated area' means an area in a county that:

- (1) borders on another state;
- (2) where ABC stores and the sale of unfortified wines and malt beverages are permitted in all cities in the county;
- (3) where the sale of unfortified wines and malt beverages is permitted in the county; and such unincorporated area
 - (a) contains more than a 1000 acres and is made up of privately-owned land and land owned by an association or club having more than 200 members and created for municipal and recreational purposes;
 - (b) which as of the date of the enactment of G.S. 18B-600 levied assessments or dues and provided municipal services.

Sec. 2. G.S. 18B-603 is amended by adding a new subsection (f2) to read as follows:

"(f2) Permits for Unincorporated Areas - The Commission may issue the permits provided for in G.S. 18B-1001(10) to qualified persons and establishments located within an unincorporated area as defined in G.S. 18B-101 without approval at an election. The mixed beverages purchased transportation permit authorized by G.S. 18B-404(b) shall be issued by a local board operating a store located in the same county as the unincorporated area."

Sec. 3. This act shall not include Robeson, Cleveland, Rutherford and Polk counties.

Sec. 4. This act is effective on January 1, 1988.

In the General Assembly read three times and ratified this the 22nd day of June, 1987.

S.B. 743

CHAPTER 444

**AN ACT TO EXTEND TEMPORARILY THE AUTHORITY OF
CONSUMER FINANCE LICENSEE'S AFFILIATES TO MAKE
HOME LOANS IN THE SAME OFFICE AS THE LICENSEE.**

The General Assembly of North Carolina enacts:

Section 1. G.S. 24-1.1A(a)(4) is rewritten to read:

"(4) Notwithstanding any other provision of law, where the lender is an affiliate operating in the same office or subsidiary operating in the same office of a licensee under the North Carolina Consumer Finance Act, the lender may charge interest to be computed only on the following basis: monthly on the outstanding principal balance at a rate not to exceed the rate provided in this subdivision.

On the fifteenth day of each month, the Commissioner of Banks shall announce and publish the maximum rate of interest permitted by this subdivision. Such rate shall be the latest published noncompetitive rate for U.S. Treasury bills with a six-month maturity as of the fifteenth day of the month plus six percent (6%), rounded upward or downward, as the case may be, to the nearest one-half of one percent (1/2 of 1%) or fifteen percent (15%), whichever is greater. If there is no nearest one-half of one percent (1/2 of 1%), the Commissioner shall round downward to the lower one-half of one percent (1/2 of 1%). The rate so announced shall be the maximum rate permitted for the term of loans made under this section during the following calendar month when the parties to such loans have agreed that the rate of interest to be charged by the lender and paid by the borrower shall not vary or be adjusted during the term of the loan. The parties to a loan made under this section may agree to a rate of interest which shall vary or be adjusted during the term of the loan in which case the maximum rate of interest permitted on such loans during a month the term of the loan shall be the rate announced by the Commissioner in the preceding calendar month.

An affiliate operating in the same office or subsidiary operating in the same office of a licensee under the North Carolina Consumer Finance Act may not make a home loan for a term in excess of six (6) months which provides for a balloon payment. For purposes of this subdivision, a balloon payment means any scheduled payment that is

more than twice as large as the average of earlier scheduled payments. This subsection does not apply to equity lines of credit as defined in G.S. 45-81."

Sec. 2. Section 9 of Chapter 154 of the 1985 Session Laws (First Session, 1985) is rewritten to read:

"Sec. 9. G.S. 53-172 is amended by adding the following new paragraphs to read:

'Each affiliate operating in the same office or subsidiary operating in the same office of a licensee making home loans as defined in G.S. 24-1.1A(e), or equity line of credit loans pursuant to G.S. 45-81 which are secured by a first mortgage or deed of trust on real property on which one or more residences are located, shall report to the Attorney General of North Carolina each quarter information concerning such loans as follows: number, rate of interest charged, principal amounts, terms, number of consumer loans or home loans refinanced by loans secured by real estate, and the number of delinquencies and foreclosures.

The North Carolina Commissioner of Banks will approve the forms for reporting. If an affiliate operating in the same office or a subsidiary operating in the same office of a licensee fails to file the report within 30 days after the due date as required by the Attorney General or violates any provision of G.S. 24-1.1A, the Attorney General shall advise the North Carolina Commissioner of Banks who may revoke under G.S. 53-172 that affiliate's or subsidiary's authority to do business in the same office as the licensee. The Attorney General shall submit a report to the General Assembly no later than December 31, 1988, concerning the loans made pursuant to the authority granted under this Article. The report shall contain the information listed above, plus any recommendations of the Attorney General, if he has any recommendations. The costs and expenses associated with collecting and maintaining the information contained in the report of the Attorney General shall be paid by those companies required to make quarterly reports under this section."

Sec. 3. The first two sentences of section 14 of Chapter 154 of the 1985 Session Laws (First Session, 1985) are rewritten to read:

"Sec. 14. Section 1 of this act is effective upon ratification and shall expire on July 31, 1987. Sections 10, 12 and 13 of this act are effective upon ratification and shall expire on July 31, 1989; provided, however, that transactions entered into under the authority of the expired sections shall not be affected by the expiration of these sections. Section 8 of this act shall become effective July 31, 1989."

Sec. 4. Section 1 of this act shall be effective on July 31, 1987 and shall expire on July 31, 1989. The remaining sections of this act are effective upon ratification.

In the General Assembly read three times and ratified this the 22nd day of June, 1987.

S.B. 822

CHAPTER 445

AN ACT TO PERMIT THE PROVISION OF SHARED USE AND
RESALE OF TELEPHONE SERVICES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 62-110 reads as rewritten:

"§ 62-110. *Certificate of convenience and necessity.*--(a) Except as provided for bus companies in Article 12 of this Chapter, no public utility shall hereafter begin the construction or operation of any public utility plant or system or acquire ownership or control thereof, either directly or indirectly, without first obtaining from the Commission a certificate that public convenience and necessity requires, or will require, such construction, acquisition, or operation: Provided, that this section shall not apply to construction into territory contiguous to that already occupied and not receiving similar service from another public utility, nor to construction in the ordinary conduct of business.

(b) The Commission shall be authorized to issue a certificate to any person applying to the Commission to offer long distance services as a public utility as defined in G.S. 62-3(23)a.6., provided that such person is found to be fit, capable, and financially able to render such service, and that such additional service is required to serve the public interest effectively and adequately; provided further, that in such cases the Commission shall consider the impact on the local exchange customers and only permit such additional service if the Commission finds that it will not jeopardize reasonably affordable local exchange service.

Notwithstanding any other provision of law, the terms, conditions, rates, and interconnections for long distance services offered on a competitive basis shall be regulated by the Commission in accordance with the public interest. In promulgating rules necessary to implement this provision, the Commission shall consider whether uniform or nonuniform application of such rules is consistent with the public interest. Provided further that the Commission shall consider whether the charges for the provision of interconnections should be uniform.

For purposes of this section, long distance services shall include the transmission of messages or other communications between two or more central offices wherein such central offices are not connected on July 1, 1983, by any extended area service, local measured service, or other local calling arrangement.

(c) The Commission shall be authorized, consistent with the public interest, to adopt procedures for the issuance of a special certificate to any person for the limited purpose of offering telephone service to the public by means of coin, coinless, or key-operated pay telephone instruments. This service may be in addition to or in competition with public telephone services offered by the certificated telephone company in the service area. The certificated local exchange telephone company in the service area where any new pay telephone service is proposed shall be the only provider of the access line from the pay instrument to the network, and the rates approved by the Commission for this access line shall be fully compensatory, reflect the business nature of the service, and shall be set on a measured usage rate basis where facilities are available or on a message rate basis otherwise. The Commission shall promulgate rules to implement the service authorized by this section, recognizing the competitive nature of the offerings and, notwithstanding any other provision of law, the Commission shall determine the extent to which such services shall be regulated and to the extent necessary to protect the public interest regulate the terms, conditions, and rates for such service and the terms and conditions for interconnection to the local exchange network.

(d) The Commission shall be authorized, consistent with the public interest and notwithstanding any other provision of law, to adopt procedures for the purpose of allowing shared use and/or resale of any telephone service provided to persons who occupy the same contiguous premises (as such term shall be defined by the Commission); provided, however, that there shall be no 'networking' of any services authorized under this section whereby two or more premises where such services are provided are connected, and provided further that the certificated local exchange telephone company shall be the only provider of access lines or trunks connecting such authorized service to the telephone network, and that the local service rates approved by the Commission for local exchange lines or trunks being shared or resold shall be fully compensatory and on a measured usage basis where facilities are available or on a message rate basis otherwise. Provided however, the Commission may permit or approve rates on bases other than measured or message for shared service whenever the service is offered to patrons of hospitals, nursing homes, rest homes, licensed retirement centers, members of clubs or students living in

quarters furnished by educational institutions, or persons temporarily subleasing a residential premise. The Commission shall issue rules to implement the service authorized by this section, considering the competitive nature of the offerings and, notwithstanding any other provision of law, the Commission shall determine the extent to which such services shall be regulated and, to the extent necessary to protect the public interest, regulate the terms, conditions, and rates charged for such services and the terms and conditions for interconnection to the local exchange network. The Commission shall require any person offering telephone service under this subsection by means of a Private Branch Exchange ('PBX') or key system to secure adequate local exchange trunks from the local exchange telephone company to assure a quality of service equal to the quality of service generally found acceptable by the Commission. Unless otherwise ordered by the Commission for good cause shown by the company, the right and obligation of the local exchange carrier to provide local service directly to any person located within its certificated service area shall continue to apply to premises where shared or resold telephone service is available, provided however, the Commission shall be authorized to establish the terms and conditions under which such services should be provided."

Sec. 2. G.S. 62-3(23)g. reads as rewritten:

"g. The term 'public utility' shall not include a hotel, ~~or~~ motel, time share or condominium complex operated primarily to serve transient occupants, which imposes charges to ~~guests~~ occupants for local, ~~or~~ long-distance, or wide area telecommunication services telephone calls when such calls are completed through the use of local access lines or long-distance message telecommunications service (MTS) of facilities provided by a public utility, and provided further that the local services received are rated in accordance with the provisions of G.S. 62-110(d) and the applicable charges for telephone calls are prominently displayed in each ~~guest room~~ area where occupant rooms are located."

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 22nd day of June, 1987.

H.B. 164

CHAPTER 446

AN ACT TO PROHIBIT THE INVESTMENT OF RETIREMENT
AND UNIVERSITY TRUST FUNDS IN CERTAIN COMPANIES
INVOLVED WITH SOUTH AFRICA.

The General Assembly of North Carolina enacts:

Section 1. G.S. 147-69.2 is amended by adding at the end a new subsection to read:

"(d) Notwithstanding the provisions of subsection (b) of this section, the State Treasurer may not invest the assets of the Retirement systems listed in G.S. 147-69.2(b)(6), or the assets of the trust funds of The University of North Carolina and its constituent institutions deposited with the State Treasurer pursuant to G. S. 116-36.1, in the stocks, securities, or other obligations of a company or financial institution doing business in the Republic of South Africa during any period of time in which either of the following conditions apply:

- (1) the company or financial institution or any subsidiary or division thereof is not a signatory to the Sullivan Principles; or
- (2) the company or financial institution or any subsidiary or division thereof is a signatory to the Sullivan Principles but has received a Category III (failing) performance rating for compliance with the Sullivan Principles, as measured by Arthur D. Little, Inc., the official compliance monitor for the signatories to the Sullivan Principles.

For the purposes of this subsection, the Sullivan Principles are a code of business practices relating to equal employment opportunities for black, coloured, and asian workers in South Africa, including but not limited to the following principles:

- (1) nonsegregation of the races in all eating, comfort, locker room and work facilities;
- (2) equal and fair employment practices for all employees;
- (3) equal pay for all employees doing equal or comparable work for the same period of time;
- (4) initiation and development of training programs that will prepare blacks, coloureds, and asians in substantial numbers for supervisory, administrative, clerical, and technical jobs;
- (5) increasing the number of blacks, coloureds, and asians in management and supervisory positions;
- (6) improving the quality of employees' lives outside the work environment in such areas as housing, transportation, schooling, recreation, and health facilities;
- (7) working to eliminate laws and customs that impede social and political justice.

The State Treasurer shall determine which companies and financial institutions have received favorable ratings solely from the annual report prepared by Arthur D. Little, Inc. The State Treasurer shall determine which companies are signatories to the Sullivan Principles

and which companies are doing business in or with the Republic of South Africa based on current, reliable and accurate information that is readily available."

Sec. 2. After July 1, 1987, no assets of the retirement systems listed in G.S. 147-69.2(b)(6), or the assets of the trust funds of The University of North Carolina and its constituent institutions deposited with the State Treasurer pursuant to G.S. 116-36.1, may remain invested in the stocks, securities, or other obligations of a company or financial institution doing business in the Republic of South Africa during any period of time in which either of the following conditions apply:

- (1) the company or financial institution or any subsidiary or division thereof is not a signatory to the Sullivan Principles; or
- (2) the company or financial institution or any subsidiary or division thereof is a signatory to the Sullivan Principles but has received a Category III (failing) performance rating for compliance with the Sullivan Principles, as measured by Arthur D. Little, Inc., the official compliance monitor for the signatories to the Sullivan Principles.

For the purposes of this section, the Sullivan Principles are a code of business practices relating to equal employment opportunities for black, coloured, and asian workers in South Africa, including but not limited to the following principles:

- (1) nonsegregation of the races in all eating, comfort, locker room and work facilities;
- (2) equal and fair employment practices for all employees;
- (3) equal pay for all employees doing equal or comparable work for the same period of time;
- (4) initiation and development of training programs that will prepare blacks, coloured, and asians in substantial numbers for supervisory, administrative, clerical, and technical jobs;
- (5) increasing the number of blacks, coloureds, and asians in management and supervisory positions;
- (6) improving the quality of employees' lives outside the work environment in such areas as housing, transportation, schooling, recreation, and health facilities;
- (7) working to eliminate laws and customs that impede social and political justice.

The State Treasurer shall determine which companies and financial institutions have received favorable ratings solely from the annual report prepared by Arthur D. Little, Inc. The State Treasurer shall determine which companies are signatories to the Sullivan

Principles and which companies are doing business in or with the Republic of South Africa based on current, reliable and accurate information. Provided, however, that if sound investment policy so requires, the State Treasurer may spread the sale of these investments over no more than three years as long as no less than one-third of the total value of the investments is sold in each year of the first two fiscal years after July 1, 1987.

Sec. 3. For the purposes of this act, a financial institution is not considered to be "doing business in South Africa" solely by virtue of administering outstanding loans to the Republic of South Africa or maintaining an office or offices and employees in the Republic of South Africa for the limited purpose of administering and collecting outstanding loans to the Republic of South Africa or its political subdivisions or agencies which were originated by the financial institution prior to the effective date of this act.

Sec. 4. This act shall become effective July 1, 1987.

In the General Assembly read three times and ratified this the 22nd day of June, 1987.

H.B. 699

CHAPTER 447

AN ACT TO AMEND G.S. 24-10.1 DEALING WITH LATE FEES.

The General Assembly of North Carolina enacts:

Section 1. Subsection (b) of G.S. 24-10.1 reads as rewritten:

"(b) No lender may charge a late payment charge:

- (1) In excess of four percent (4%) of the amount of the payment past due; or
- (2) In excess of the amount disclosed with particularity to the borrower pursuant to the provisions of the Federal Consumer Credit Protection Act if the transaction is one to which the provisions of that act apply, which in no event shall exceed four percent (4%); or
- (3) For any payment unless past due for 15 days or more; provided, however, if the loan is one on which interest on each installment is paid in advance, no late payment charge may be charged until the payment is 30 days past due or more; or
- (4) More than once with respect to a single late payment. If a late payment charge is deducted from a payment made on the contract and such deduction results in a subsequent default on a subsequent payment, no late payment charge may be imposed for such default. If a late payment charge

- has been once imposed with respect to a particular late payment, no such charge shall be imposed with respect to any future payment which would have been timely and sufficient but for the previous default. ~~A late payment charge for any particular late payment shall be deemed to have been waived by the lender unless, within 45 days following the date on which the payment was due, the lender either collects the late payment charge or sends written notice of the charge to the borrower; or default; provided that when a borrower fails to make an installment payment, and the terms of the loan agreement provide that subsequent payments shall first be applied to the past due balance, and the borrower resumes making installment payments but has not paid all past due installments, then the lender may enforce the contract according to its terms, imposing a separate late payment charge for each installment that becomes due until the default is cured; or~~
- (5) On any loan which by its terms calls for repayment of the entire balance in a single payment and not for installments of interest or principal and ~~interest~~, interest; or
- (6) Unless the lender notifies the borrower within 45 days following the date the payment was due that a late payment charge has been imposed for a particular late payment which late payment must be paid unless the borrower can show that the installment was paid in full and on time. No late payment charge may be collected from any borrower if the borrower informs the lender that non-payment of an installment is in dispute and presents proof of payment within 45 days of receipt of the lender's notice of the late charge."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 22nd day of June, 1987.

H.B. 791

CHAPTER 448

AN ACT TO AMEND THE ELECTRIC AND TELEPHONE MEMBERSHIP CORPORATIONS ACT TO ENLARGE THE VOTE OF MEMBERS REQUIRED TO AUTHORIZE A TELEPHONE MEMBERSHIP CORPORATION OR AN ELECTRIC MEMBERSHIP CORPORATION TO SELL, MORTGAGE, LEASE OR OTHERWISE ENCUMBER OR DISPOSE OF ITS PROPERTY.

The General Assembly of North Carolina enacts:

Section 1. G.S. 117-20 reads as rewritten:

"§ 117-20. *Encumbrance, sale, etc., of property.*--No corporation may sell, mortgage, lease or otherwise encumber or dispose of any of its property (other than merchandise and property which lie within the limits of an incorporated city or town, or which shall represent not in excess of ten percent (10%) of the total value of the corporation's assets, or which in the judgment of the board are not necessary or useful in operating the corporation) unless:

(1) Authorized to do so by the votes ~~of at least a majority of its members~~ cast in person by at least two-thirds of its total membership, without proxies, and

(2) The consent of the holders of seventy-five per centum (75%) in amount of the bonds of such corporation then outstanding is obtained.

Notwithstanding the foregoing provisions of this section, the members of such a corporation may, by the affirmative majority of the votes cast in person or by proxy at any meeting of the members, delegate to the board of directors the power and authority (i) to borrow moneys from any source and in such amounts as the board may from time to time determine and, (ii) to mortgage or otherwise pledge or encumber any or all of the corporation's property or assets as security therefor, and (iii) with respect to Electric Membership Corporations only, to sell and lease back any of the corporation's property or assets."

Sec. 2. G.S. 117-24 reads as rewritten:

"§ 117-24. *Dissolution.*--Any corporation created hereunder may be dissolved by filing, as hereinafter provided, a certificate which shall be entitled and endorsed 'Certificate of Dissolution of' (the blank space being filled in with the name of the corporation) and shall state:

(1) Name of the corporation, and if such corporation is a corporation resulting from a consolidation as herein provided, the names of the original corporations.

(2) The date of filing of the certificate of incorporation, and if such corporation is a corporation resulting from a consolidation as herein provided, the dates on which the certificates of incorporation of the original corporations were filed.

(3) That the corporation elects to dissolve.

(4) The name and post-office address of each of its directors, and the name, title and post-office address of each of its officers.

Such certificate shall be subscribed and acknowledged in the same manner as an original certificate of incorporation by the president or a vice-president, and the secretary or an assistant secretary, who shall make and annex an affidavit, stating that they have been authorized to execute and file such certificate by the votes cast in person ~~or by proxy by a majority of the members of the corporation entitled to vote~~ at least two-thirds of its total membership, without proxies.

A certificate of dissolution and a certified copy or copies thereof shall be filed in the same place as an original certificate of incorporation and thereupon the corporation shall be deemed to be dissolved.

Such corporation shall continue for the purpose of paying, satisfying and discharging any existing liabilities or obligations and collecting or liquidating its assets, and doing all other acts required to adjust and wind up its business and affairs, and may sue and be sued in its corporate name. Any assets remaining after all liabilities or obligations of the corporation have been satisfied or discharged shall be distributed among the members in such manner as is provided for in the corporation's charter or bylaws, and the charter or bylaws may provide for distributions to persons who were members in one or more prior years."

Sec. 3. G.S. 117-34 reads as rewritten:

"§ 117-34. *Dissolution.*--Any telephone membership corporation created under this Article may be dissolved by filing, as hereinafter provided, a certificate which shall be entitled and endorsed 'Certificate of Dissolution of' (the blank space being filled in with the name of the corporation) and shall state:

(1) Name of the corporation, and if such corporation is a corporation resulting from a consolidation as herein provided, the names of the original corporations.

(2) The date of filing of the certificate of incorporation, and if such corporation is a corporation resulting from a consolidation as herein provided, the dates on which the certificates of incorporation of the original corporations were filed.

(3) That the corporation elects to dissolve.

(4) The name and post-office address of each of its directors, and the name, title and post-office address of each of its officers.

Such certificate shall be subscribed and acknowledged in the same manner as an original certificate of incorporation by the president or a vice-president, and the secretary or an assistant secretary, who shall make and annex an affidavit, stating that they have been authorized to execute and file such certificate by the votes cast in person ~~or by proxy by a majority of the members of the corporation entitled to vote~~ at least two-thirds of its total membership, without proxies.

A certificate of dissolution and a certified copy or copies thereof shall be filed in the same place as an original certificate of incorporation and thereupon the corporation shall be deemed to be dissolved.

Such corporation shall continue for the purpose of paying, satisfying and discharging any existing liabilities or obligations and collecting or liquidating its assets, and doing all other acts required to adjust and wind up its business and affairs, and may sue and be sued in its corporate name. Any assets remaining after all liabilities or obligations of the corporation have been satisfied or discharged shall pass to and become the property of the State."

Sec. 4. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 22nd day of June, 1987.

H.B. 1061

CHAPTER 449

AN ACT TO PROTECT CAVES.

The General Assembly of North Carolina enacts:

Section 1. Chapter 14 of the General Statutes of North Carolina is amended by adding a new Article to read:

"Article 22B.

"Cave Protection Act.

"§ 14-159.20. *Definitions.*--The terms listed below have the following definitions as used in this Article, unless the context clearly requires a different meaning:

(1) 'Cave' means any naturally occurring subterranean cavity. The word 'cave' includes or is synonymous with cavern, pit, well, sinkhole, and grotto;

(2) 'Commercial cave' means any cave with improved trails and lighting utilized by the owner for the purpose of exhibition to the general public as a profit or nonprofit enterprise, wherein a fee is collected for entry;

(3) 'Gate' means any structure or device located to limit or prohibit access or entry to any cave;

(4) 'Person' means any individual, partnership, firm, association, trust or corporation;

(5) 'Speleothem' means a natural mineral formation or deposit occurring in a cave. This includes or is synonymous with stalagmites, stalactites, helectites, anthodites, gypsum flowers, needles, angel's hair, soda straws, draperies, bacon, cave pearls, popcorn (coral),

rimstone dams, columns, palettes, and flowstone. Speleothems are commonly composed of calcite, epsomite, gypsum, aragonite, celestite and other similar minerals; and

(6) 'Owner' means a person who has title to land where a cave is located, including a person who owns title to a leasehold estate in such land.

" § 14-159.21. *Vandalism; penalties.*--It is unlawful for any person, without express, prior, written permission of the owner, to willfully or knowingly:

(1) Break, break off, crack, carve upon, write, burn or otherwise mark upon, remove, or in any manner destroy, disturb, deface, mar or harm the surfaces of any cave or any natural material therein, including speleothems;

(2) Disturb or alter in any manner the natural condition of any cave;

(3) Break, force, tamper with or otherwise disturb a lock, gate, door or other obstruction designed to control or prevent access to any cave, even though entrance thereto may not be gained.

Any person violating a provision of this section shall be guilty of a misdemeanor, punishable by a fine of not less than one hundred fifty dollars (\$150.00) or more than five hundred dollars (\$500.00), imprisonment for not less than 10 days or more than six months, or both.

" § 14-159.22. *Sale of speleothems unlawful; penalties.*--It is unlawful to sell or offer for sale any speleothems in this State, or to export them for sale outside the State. A person who violates any of the provisions of this section shall be guilty of a misdemeanor, punishable by a fine of not less than one hundred fifty dollars (\$150.00) or more than five hundred dollars (\$500.00), imprisonment for not less than 10 days or more than six months, or both.

" § 14-159.23. *Limitation of liability of owners and agents.*--The owner of a cave, and his agents and employees, shall not be liable for any injury to, or for the death of any person, or for any loss or damage to property, by reason of any act or omission unless it is established that the injury, death, loss, or damage occurred as a result of gross negligence, wanton conduct, or intentional wrongdoing. The limitation of liability provided by this section applies only with respect to injury, death, loss, or damage occurring within a cave, or in connection with entry into or exit from a cave, and applies only with respect to persons to whom no charge has been made for admission to the cave."

Sec. 2. This act shall become effective October 1, 1987, and shall apply to offenses occurring on and after that date.

In the General Assembly read three times and ratified this the 23rd day of June, 1987.

S.B. 221

CHAPTER 450

AN ACT TO INCREASE THE INTEREST RATE APPLICABLE TO
IN REM PROPERTY TAX FORECLOSURES AND TO PERMIT A
TAXING UNIT TO COLLECT ADMINISTRATIVE COSTS
INCURRED IN THESE FORECLOSURES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-375 is amended as follows:

(1) by rewriting the last sentence of subsection (c) to read:

"All costs of mailing and publication, plus a charge of fifty dollars (\$50.00) to defray administrative costs, shall be added to those set forth in subsection (b)."; and

(2) by deleting the phrase "the rate of six percent (6%) per annum" in subsection (d) and substituting the phrase "an annual rate of eight percent (8%)".

Sec. 2. This act shall become effective July 1, 1987, and shall apply to tax liens docketed on or after that date.

In the General Assembly read three times and ratified this the 23rd day of June, 1987.

S.B. 237

CHAPTER 451

AN ACT TO AUTHORIZE CERTAIN COUNTIES AND CITIES TO
REGULATE ABANDONED AND JUNKED VEHICLES FOR
AESTHETIC PURPOSES.

The General Assembly of North Carolina enacts:

Section 1. The first sentence of Section 1 of Chapter 841 of the 1983 Session Laws is amended by adding immediately after "Dare" the phrase ", Cabarrus, Moore".

Sec. 2. The first sentence of Section 2 of Chapter 841 of the 1983 Session Laws is amended by adding immediately after "Dare" the phrase ", Cabarrus, Moore".

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 23rd day of June, 1987.

AN ACT TO PROVIDE A SPECIAL MIGRATORY WATERFOWL
HUNTING LICENSE AND TO PRESCRIBE THE PENALTY
FOR MIGRATORY GAME BIRD VIOLATIONS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 113-270.2B reads as rewritten:

"§ 113-270.2B. *Voluntary migratory waterfowl conservation stamp print.*--(a) The Wildlife Resources Commission has exclusive production rights for the voluntary migratory waterfowl conservation stamp print, and is authorized to adopt policy for the annual selection of an appropriate design for the stamp print and to have the stamp print produced for sale at a price not to exceed ten dollars (\$10.00). This policy may include ownership rights of the original art selected and; arrangements for the reproduction, distribution and marketing of prints of the design of the stamp; and provision for sharing the resulting revenues.

(b) The proceeds accruing to the Commission from its share of the voluntary migratory waterfowl conservation stamp program prints shall be used by the Commission for the benefit of migratory waterfowl management in North Carolina."

Sec. 2. G.S. 113-270.3(b) is amended by adding a new subdivision to read:

"(6) Migratory waterfowl hunting license - \$5.00. This license is valid for use by an individual within the State and must be procured before taking any migratory waterfowl within the State. The Wildlife Resources Commission may implement this license requirement through the sale of an official waterfowl stamp which may be a facsimile, in an appropriate size, of the waterfowl conservation print authorized by G.S. 113-270.2B. An amount not less than one-half of the annual proceeds from the sale of this license shall be used by the Commission for cooperative waterfowl habitat improvement projects through contracts with local waterfowl interests, with the remainder of the proceeds to be used by the Commission in its programs for the conservation of waterfowl."

Sec. 3. G.S. 113-270.3(d) reads as rewritten:

"(d) Any individual who possesses a current and valid lifetime or resident or nonresident sportsman combination license may at lawful times and places engage in any specially regulated activity without any of the licenses required by subdivisions (1) through (4) of subsection (b). Any individual who possesses a current and valid lifetime sportsman combination license may engage in hunting migratory waterfowl without the license required by subdivision (b)(6) of this section. The Wildlife Resources Commission may administratively

provide for the annual issuance of big game tags, or other identification for big game authorized by subsection (c), to holders of lifetime sportsman combination licenses."

Sec. 4. G.S. 113-294 is amended by adding a new subsection to read:

"(m) Any person who unlawfully takes any migratory game bird with a rifle or an unplugged or improperly plugged shotgun; or who unlawfully takes any migratory game bird with the aid of live decoys or any salt, grain, fruit, or other bait; or who unlawfully takes any migratory game bird during the closed season or during prohibited shooting hours; or who unlawfully exceeds the bag limits or possession limits applicable to any migratory game bird is guilty of a misdemeanor. In addition to any other penalty prescribed in this Subchapter for the offense in question, any person convicted under this subsection is punishable by a fine of not less than one hundred fifty dollars (\$150.00) in addition to any other punishment that the court, in its discretion, may impose."

Sec. 5. Section 4 of this act shall become effective October 1, 1987. Sections 1, 2, and 3 of this act shall become effective July 1, 1988.

In the General Assembly read three times and ratified this the 23rd day of June, 1987.

S.B. 558

CHAPTER 453

AN ACT TO PERMIT L.P. GAS DEALERS TO USE OTHER MEANS OF FINANCIAL RESPONSIBILITY BESIDES INSURANCE.

The General Assembly of North Carolina enacts:

Section 1. The last sentence of the second paragraph of G.S. 119-56 is rewritten to read:

"In lieu of insurance, the dealer may file and maintain a bond, certificate of deposit or irrevocable letter of credit in a form satisfactory to the Commissioner which provides protection for the public in the same amounts and to the same extent as said insurance."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 23rd day of June, 1987.

S.B. 629

CHAPTER 454

AN ACT TO PROVIDE THAT THE COUNTIES OF ALEXANDER, CATAWBA, IREDELL, JOHNSTON, RANDOLPH, AND YADKIN AND THE MUNICIPALITIES THEREIN NEED NOT MAIL ZONING NOTICES FOR A REVISION OF THE COMPLETE ZONING ORDINANCE OR MAP.

The General Assembly of North Carolina enacts:

Section 1. Notwithstanding G.S. 160A-384, the municipalities within the counties of Alexander, Catawba, Iredell, Johnston, Randolph, and Yadkin need not mail the notice required by that section in the case of a revision of the complete zoning ordinance or map.

Sec. 2. Notwithstanding G.S. 153A-343, the Counties of Alexander, Catawba, Iredell, Johnston, Randolph, and Yadkin need not mail the notice required by that section in the case of a revision of the complete zoning ordinance or map.

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 23rd day of June, 1987.

S.B. 638

CHAPTER 455

AN ACT TO EXEMPT IREDELL COUNTY AND OTHER COUNTIES AND INCORPORATED MUNICIPALITIES LOCATED THEREIN FROM CERTAIN ZONING NOTICE REQUIREMENTS.

The General Assembly of North Carolina enacts:

Section 1. Notwithstanding G.S. 153A-343 or any other provision of law, a county shall not be required to mail any notice of proposed zoning reclassification to any property owner or other person where:

(1) the zoning reclassification action directly affects more than six properties, owned by a total of at least six different property owners; or

(2) the zoning reclassification is an amendment to the text of the zoning ordinance.

Sec. 2. Notwithstanding G.S. 160A-384 or any other provision of law, a city shall not be required to mail any notice of proposed zoning reclassification to any property owner or other person where:

(1) the zoning reclassification action directly affects more than six properties, owned by a total of at least six different property owners; or

(2) the zoning reclassification is an amendment to the text of the zoning ordinance.

Sec. 3. Section 1 of this act applies to Iredell, Yadkin and Cabarrus Counties only. Section 2 of this act applies only to municipalities located within Iredell, and Alexander, Rowan, and Cabarrus Counties.

Sec. 4. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 23rd day of June, 1987.

H.B. 398

CHAPTER 456

AN ACT TO AMEND THE BEDDING LAW.

The General Assembly of North Carolina enacts:

Section 1. G.S. 130A-261(1) reads as rewritten:

"(1) 'Bedding' means any mattress, upholstered spring, sleeping bag, pad, comforter, cushion, pillow, decorative pillow, and any other item used principally for sleeping. This definition includes only those items which have a thickness of more than one inch. This definition also includes dual purpose furniture such as studio couches and sofa beds. The term 'mattress' does not include water bed liners, bladders or cylinders but does include padding or cushioning material which has a thickness of more than one inch."

Sec. 2. G.S. 130A-262(c) reads as rewritten:

"(c) A person who sanitizes bedding shall attach to the bedding a yellow tag containing information required by the rules of the Commission ~~and shall affix to the bedding the adhesive stamp required by G.S. 130A-269.~~"

Sec. 3. G.S. 130A-265(a) reads as rewritten:

"(a) A tag of durable material approved by the Commission shall be sewed securely to all bedding. The tag shall be at least two inches by three inches in size ~~and shall have affixed to it the adhesive stamp or have a printed stamp exemption permit number provided for in G.S. 130A-269. The stamp shall be affixed so as not to interfere with the wording on the tag.~~"

Sec. 4. G.S. 130A-265(b) reads as rewritten:

"(b) The following shall be plainly stamped or printed upon the tag with ink in English:

- (1) The name and kind of material or materials used to fill the bedding which are listed in the order of their predominance;
- (2) A registration number obtained from the Department; and
- (3) In letters at least one-eighth inch high the words 'made of new material', if the bedding contains no previously used material; or the words 'made of previously used materials', if the bedding contains any previously used material; or the word 'secondhand' on any bedding which has been used but not remade; and
- ~~(4) A stamp exemption permit number when requirements of G.S. 130A-269 are met ."~~

Sec. 5. G.S.130A-267(a) reads as rewritten:

"(a) No person shall sell any bedding in this State (whether manufactured within or without this State) which has not been manufactured, tagged, and labeled ~~and stamped~~ in the manner required by this Part and which does not otherwise comply with the provisions of this Part."

Sec. 6. G.S. 130A-268 reads as rewritten:

"§ 130A-268. ~~Registration numbers; licenses.~~--(a) All persons manufacturing or sanitizing bedding in this State or manufacturing bedding to be sold in this State shall apply for a registration number on a form prescribed by the Secretary. Upon receipt of the application completed application and applicable fees, the Department shall issue to the applicant a certificate of registration showing the person's name and address, registration number and other pertinent information required by the rules of the Commission.

~~(b) For the purpose of defraying expenses incurred in the enforcement of the provisions of this Part, the following license fees are to be paid to the Department, deposited in the "bedding law fund" and expended in accordance with the provisions of G.S. 130A-270. Unless exempted, no person shall sanitize any bedding until the person has received a "sanitizer's license" upon the payment of twenty-five dollars (\$25.00) for the calendar year to the Department. Unless exempted, no person shall manufacture any bedding in this State or manufacture bedding to be sold in this State until that person has secured a "manufacturer's license" upon the payment of twenty-five dollars (\$25.00) for the calendar year to the Department.~~

~~(c) If a bedding manufacturing or sanitizing business is established after June 30, the license shall be furnished at half the annual fee and shall be valid for the remainder of the calendar year. The license may be transferred upon the sale of the business in accordance with the~~

rules of the Commission.

(d) Licenses shall be kept conspicuously posted in the place of business of the licensee at all times.

(e) The Secretary may suspend a license of a person for up to six months for two or more serious violations of this Part or the rules of the Commission within any 12-month period. "

Sec. 7. G.S.130A-269 reads as rewritten:

" § 130A-269. **Enforcement funds; stamps; stamp exemption permit** **Payment of fees; licenses.**--(a) The Department shall administer and enforce this Part. The Department shall provide specially designated adhesive stamps for use under the provisions of this Part. Upon request and payment the Department shall furnish stamps at a rate of eighteen dollars (\$18.00) per 500 stamps.

(b) A person manufacturing bedding in North Carolina or manufacturing bedding to be sold in this State may, in lieu of purchasing and affixing the adhesive stamps, annually secure from the Department a stamp exemption permit and print the stamp exemption number on the label.

(c) A stamp exemption permit may be issued to a person who has done business in this State throughout the preceding calendar year at a cost determined annually by the total number of bedding units manufactured or sold in this State by the applicant during the calendar year immediately preceding the issuance of the permit at the rate of eighteen dollars (\$18.00) for each 500 bedding units or fraction of 500 units. The Department shall administer and enforce this Part. A person who has done business in this State throughout the preceding calendar year shall obtain a license by paying a fee to the Department in an amount determined by the total number of bedding units manufactured, sold, or sanitized in this State by the applicant during the calendar year immediately preceding, at the rate of five and two tenths cents (5.2¢) per bedding unit. However, if this amount is less than fifty dollars (\$50.00), a minimum fee of fifty dollars (\$50.00) shall be paid to the Department.

(d) A stamp exemption permit may be issued to a person who has not done business in this State throughout the preceding calendar year upon an initial payment of seven hundred twenty dollars (\$720.00) per year, prorated in accordance with the quarter of the calendar year in which the person makes application for the permit. After submission of proof of business volume amounts in accordance with subsection (h) for that part of the preceding calendar year in which the person used a stamp exemption permit issued under this subsection, the Department shall determine the cost of the permit for that time period by using a rate of eighteen dollars (\$18.00) for each 500 bedding

~~units or fraction of 500 units. If the person's initial payment is more than the cost of the permit, the Department shall make a refund or an adjustment to the cost of the next permit in the amount of the difference. If the initial payment is less than the cost of the permit, the person shall pay the difference to the Department. Payments, refunds and adjustments shall be made in accordance with rules adopted by the Commission. A person who has not done business in this State throughout the preceding calendar year shall obtain a license by paying an initial fee to the Department in the amount of seven hundred twenty dollars (\$720.00) for the first year in which business is done in this State, prorated in accordance with the quarter of the calendar year in which the person begins doing business. After submission of proof of business volume in accordance with subsection (h) of this section for the part of the preceding calendar year in which the person did business in this State, the Department shall determine the amount of fee for which the person is responsible for that time period by using a rate of five and two tenths cents (5.2¢) for each bedding unit. However, if this amount is less than fifty dollars (\$50.00), then the amount of the fee for which the person is responsible shall be fifty dollars (\$50.00). If the person's initial payment is more than the amount of the fee for which the person is responsible, the Department shall make a refund or adjustment to the cost of the fee due for the next year in the amount of the difference. If the initial payment is less than the amount of the fee for which the person is responsible, the person shall pay the difference to the Department.~~

(d1) Payments, refunds, and adjustments shall be made in accordance with rules adopted by the Commission.

(d2) Upon payment of the fees charged pursuant to subsections (c) and (d), or the first installment thereof as provided by rules adopted by the Commission, the Department shall issue a license to the person. Licenses shall be kept conspicuously posted in the place of business of the licensee at all times. The Secretary may suspend a license for a maximum of six months for two or more serious violations of this Part or of the rules of the Commission, within any 12-month period.

(e) A maximum ~~charge~~ fee of seven hundred fifty dollars (\$750.00) shall be ~~made charged~~ for units of bedding manufactured in this State but not sold in this State.

(f) For the ~~purpose of computing the cost of stamp exemption permits only~~ sole purpose of computing fees for which a person is responsible, the following definitions shall apply: One mattress is defined as one bedding unit; one upholstered spring is defined as one bedding unit; one pad is defined as one bedding unit; one sleeping bag

is defined as one bedding unit; five comforters ~~or pillows~~, pillows or decorative pillows are defined as one bedding unit; and any other item is defined as one bedding unit.

(g) An application for ~~a stamp exemption permit license~~ must be submitted on a form prescribed by the Secretary. No ~~stamp exemption permit license~~ may be issued to a person unless the person complies with the rules of the Commission governing the granting of ~~stamp exemption permits licenses~~.

(h) The Commission shall adopt rules for the proper enforcement of this section. The rules shall include provisions governing the type and amount of proof which must be submitted by the applicant to the Department in order to establish the number of bedding units that were, during the preceding calendar year:

- (1) Manufactured and sold in this State;
- (2) Manufactured outside of this State and sold in this State; and
- (3) Manufactured in this State but not sold in this State.

(i) The Commission may provide in its rules for additional proof of the number of bedding units sold during the preceding calendar year when it has reason to believe that the proof submitted by the manufacturer is incomplete, misleading or incorrect."

Sec. 8. G.S. 130A-271(b) reads as rewritten:

"(b) The Secretary may prohibit sale and place an 'off sale' tag on any bedding which is not made, sanitized, or tagged ~~or stamped~~ as required by this Part and the rules of the Commission. The bedding shall not be sold or otherwise removed until the violation is remedied and the Secretary has reinspected it and removed the 'off sale' tag.

Sec. 9. G.S. 130A-272(a) reads as rewritten:

"(a) In cases where bedding is manufactured, sanitized or renovated in a plant or place of business which has qualified as a nonprofit agency for the blind or severely handicapped under P.L. 92-28, as amended, the responsible person shall satisfy the provisions of this Part and the rules of the Commission. However, the responsible persons at these plants or places of business shall not be required ~~to affix stamps or pay a license tax to pay fees in accordance with G.S. 130A-269 . Bedding made at these plants or places of business may be sold by any dealer without the stamps being affixed.~~"

Sec. 10. This act shall become effective January 1, 1988.

In the General Assembly read three times and ratified this the 23rd day of June, 1987.

AN ACT TO CLARIFY WHEN SEVENTEEN YEAR OLDS CAN REGISTER TO VOTE FOR THE PARTY PRIMARY ELECTION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 163-59 reads as rewritten:

" § 163-59. *Right to participate or vote in party primary.*--No person shall be entitled to vote or otherwise participate in the primary election of any political party unless he

(1) Is a registered voter, and

(2) Has declared and has had recorded on the registration book or record the fact that he affiliates with the political party in whose primary he proposes to vote or participate, and

(3) Is in good faith a member of that party.

Any person who will become qualified by age or residence to register and vote in the general election or regular municipal election for which the primary is held, even though not so qualified by the date of the primary, shall be entitled to register for the primary and general or regular municipal election prior to the primary and then to vote in the primary after being registered. Such person may register not earlier than 60 days nor later than the twenty-first day (excluding Saturdays and Sundays) prior to the primary. In addition, persons who will become qualified by age to register and vote in the general election or regular municipal election for which the primary is held, who do not register during the special period may register to vote after such period as if they were qualified on the basis of age, but until they are qualified by age to vote, they may vote only in primary elections."

Sec. 2. G.S. 163-283 reads as rewritten:

" § 163-283. *Right to participate or vote in party primary.*--No person shall be entitled to vote or otherwise participate in the primary election of any political party unless he

(1) Is a registered voter, and

(2) Has declared and has had recorded on the registration book or record the fact that he affiliates with the political party in whose primary he proposes to vote or participate, and

(3) Is in good faith a member of that party.

Any person who will become qualified by age or residence to register and vote in the general election for which the primary is held, even though not so qualified by the date of the primary election, shall be entitled to register while the registration books are open during the regular registration period prior to the primary and then to vote in the

primary after being registered, provided however, under full-time and permanent registration, such an individual may register not earlier than 60 days nor later than the 21st day prior to the primary. In addition, persons who will become qualified by age to register and vote in the general election for which the primary is held, who do not register during the special period may register to vote after such period as if they were qualified on the basis of age, but until they are qualified by age to vote, they may vote only in primary elections."

Sec. 3. G.S. 163-213.2 reads as rewritten:

"§ 163-213.2. *Primary to be held; date; qualifications and registration of voters.*--On the second Tuesday in March, 1988, and every four years thereafter, the voters of this State shall be given an opportunity to express their preference for the person to be the presidential candidate of their political party.

Any person otherwise qualified who will become qualified by age to vote in the general election held in the same year of the presidential preference primary shall be entitled to register and vote in the presidential preference primary. Such persons may register not earlier than 60 days nor later than the 21st day prior to the said primary. In addition, persons who will become qualified by age to register and vote in the general election for which the primary is held, who do not register during the special period may register to vote after such period as if they were qualified on the basis of age, but until they are qualified by age to vote, they may vote only in primary elections."

Sec. 4. This act shall become effective with respect to elections held on or after January 1, 1988.

In the General Assembly read three times and ratified this the 23rd day of June, 1987.

H.B. 1025

CHAPTER 458

AN ACT RELATING TO THE POWER OF CITIES AND COUNTIES TO CONTROL RENTS.

The General Assembly of North Carolina enacts:

Section 1. Chapter 42 of the General Statutes is amended by adding a new section to read:

"§ 42-14.1. *Rent control.*--No county or city as defined by G.S. 160A-1 may enact, maintain, or enforce any ordinance or resolution which regulates the amount of rent to be charged for privately owned, single-family or multiple unit residential or commercial rental property. This section shall not be construed as prohibiting any

county or city, or any authority created by a county or city for that purpose, from:

- (1) regulating in any way property belonging to that city, county, or authority;
- (2) entering into agreements with private persons which regulate the amount of rent charged for subsidized rental properties; or
- (3) enacting ordinances or resolutions restricting rent for properties assisted with Community Development Block Grant Funds."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 23rd of June, 1987.

H.B. 1258

CHAPTER 459

AN ACT RELATING TO THE AUTHORITY OF BANKS TO MAKE LOANS TO EXECUTIVE OFFICERS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 53-91 is rewritten to read:

" § 53-91. *When executive officers may borrow.*--(a) No executive officer of a bank, nor a firm or partnership of which such executive officer is a member, nor a corporation in which such executive officer owns a controlling interest, shall borrow an amount exceeding twenty-five thousand dollars (\$25,000) from the bank of which he is an executive officer except upon good collateral or other ample security or endorsement. Collateral or other security is not required with respect to a loan or loans made to an executive officer pursuant to this section when the total amount of such loan or loans, in the aggregate, does not exceed twenty-five thousand dollars (\$25,000).

(b) Any loan in excess of twenty-five thousand dollars (\$25,000) made pursuant to this section shall be made only upon the prior approval of the board of directors of the bank. A certified copy of a resolution approving any such loan, duly adopted by a majority of the board of directors and entered upon the minutes, including the names of the directors approving the resolution, shall be maintained in the office in which the indebtedness is housed and shall set forth the amount of the loan and a brief description of the security upon which the loan is made.

A loan made pursuant to this section and not exceeding twenty-five thousand dollars (\$25,000) shall not require the approval of the board of directors.

(c) In no event shall loans the total of which exceeds two hundred fifty thousand dollars (\$250,000) be made by a bank to any executive officer of such bank; provided, however, this limitation shall not apply

to loans extended to any officer or employee for the purchase of a primary residence.

(d) This section shall not apply to directors who are not executive officers.

(e) For purposes of the section, the term 'executive officer' shall mean an officer who has authority to participate in major policy-making functions of the bank.

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 23rd of June, 1987.

H.B. 917

CHAPTER 460

AN ACT MAKING SUNDRY AMENDMENTS CONCERNING LOCAL GOVERNMENTS IN ORANGE AND CHATHAM COUNTIES.

The General Assembly of North Carolina enacts:

TITLE I. CHAPEL HILL OCCUPANCY TAX.

Section 1. Occupancy Tax. (a) Authorization and scope. The Chapel Hill Town Council may, by ordinance, levy a room occupancy tax of no more than three percent (3%) on the gross receipts derived from the rental of any room, lodging, or similar accommodation subject to sales tax under G.S. 105-164.4(3).

This tax does not apply to accommodations furnished by nonprofit charitable, educational, benevolent, or religious organizations when furnished in furtherance of their nonprofit purpose. This tax is in addition to any State or local sales tax.

(b) Collection. Every operator of a business subject to the tax levied under this section shall, on and after the effective date of the levy of the tax, collect the tax. This tax shall be collected as part of the charge for furnishing a taxable accommodation. The tax shall be stated and charged separately on the sales records, and shall be paid by the purchaser to the operator of the business as trustee for and on account of the Town of Chapel Hill. The tax shall be added to the sales price and shall be passed on to the purchaser instead of being borne by the operator of the business. The Town shall design, print, and furnish to all appropriate businesses and persons in the Town the necessary forms for filing returns and instructions to ensure the full collection of the tax.

An operator of a business who collects the occupancy tax levied under this section may deduct from the amount remitted by him to the Town a discount of one percent (1%) of the amount collected as

reimbursement for the expenses incurred in collecting the tax.

(c) Administration. The Town shall administer a tax levied under this section. A tax levied under this section is due and payable to the Town revenue collector in monthly installments on or before the 15th day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the 15th day of each month, prepare and render a return on a form prescribed by the Town. The return shall state the total gross receipts derived in the preceding month from rentals and sales upon which the tax is levied.

(d) Penalties. A person, firm, corporation, or association who fails or refuses to file the return required by this section shall pay a penalty of ten dollars (\$10.00) for each day's omission. In case of failure or refusal to file the return or pay the tax for a period of 30 days after the time required for filing the return or for paying the tax, there shall be an additional tax, as a penalty, of five percent (5%) of the tax due in addition to any other penalty, with an additional tax of five percent (5%) for each additional month or fraction thereof until the tax is paid.

Any person who willfully attempts in any manner to evade a tax imposed under this section or who willfully fails to pay the tax or make and file a return shall, in addition to all other penalties provided by law, be guilty of a misdemeanor and shall be punishable by a fine not to exceed one thousand dollars (\$1,000) and imprisonment not to exceed 30 days.

(e) Use and Distribution of Tax Revenue. The Town Council of the Town of Chapel Hill shall decide on the allocation of the revenues collected from this tax annually during its budgeting process with particular consideration given to providing funding for visitor information services and support for cultural events, and not less than ten percent (10%) of the annual revenues shall be used for those purposes.

The Town may contract with nonprofit organizations to undertake or carry out the activities and programs for which the revenue may be expended. All contracts entered into with nonprofit organizations shall require an annual financial audit of any funds expended and a performance audit of contractual obligations.

(f) Repeal. A tax levied under this section may be repealed by ordinance adopted by the Chapel Hill Town Council. Repeal of a tax levied under this section shall become effective on the first day of a month and may not become effective until the end of the fiscal year in which the repeal ordinance was adopted. Repeal of a tax levied under this section does not affect a liability for a tax that attached before the effective date of the repeal, nor does it affect a right to a refund of a

tax that accrued before the effective date of the repeal.

Sec. 2. Any tax enacted pursuant to this title shall not apply to the Durham County portion of the Town of Chapel Hill.

TITLE II. CHAPEL HILL SMOKE DETECTORS.

Sec. 3. The Charter of the Town of Chapel Hill being Chapter 473, Session Laws of 1975, is amended by adding a new section to read:

"Section 6.3. Smoke Detectors. Notwithstanding any provision of the North Carolina State Building Code or any general or local law to the contrary, the Town of Chapel Hill may provide, by ordinance, that the owners of all rental residential dwelling units whose units are not required to have smoke detectors under the State Building Code shall install smoke detectors in such units within 90 days after the effective date of such ordinance."

TITLE III. CHATHAM IMPACT FEES.

Sec. 4. *Impact Fees Authorized.* (a) The Board of Commissioners of a county may provide by ordinance for a system of impact fees to be paid by developers to help defray the costs to the county of constructing certain capital improvements, the need for which is created in substantial part by the new development that takes place within the county.

(b) For purposes of this title, the term "capital improvements" includes capital improvements to schools, roads, public recreation facilities, sidewalks, bikeways, rescue facilities, surface water drainage systems, water or sewer systems, and fire stations.

(c) An ordinance adopted pursuant to authority contained in this act may be made applicable to all development that occurs within the county.

Sec. 5. *Amount of Fees.* In establishing the amount of any impact fee, the county shall endeavor to approach the objective of having every development contribute to a capital improvements fund an amount of revenue that bears a reasonable relationship to that development's fair share of the costs of the capital improvements that are needed in part because of that development. In fulfilling this objective, the Board of Commissioners shall, among other steps and actions:

(1) Estimate the total cost of improvements by category (e.g., schools, roads, public recreation facilities, etc.) that will be needed to provide in a reasonable manner for the public health, safety and welfare of persons residing within the county during a reasonable planning period not to exceed 20 years. The Board of Commissioners may divide the county into two or more districts and estimate the costs of needed improvements within each district. These estimates shall be

periodically reviewed and updated, and the planning period used may be changed from time to time.

(2) Establish a percentage of the total costs of each category of improvement that, in keeping with the objective set forth above, should fairly be borne by those paying the impact fee.

(3) Establish a formula that fairly and objectively apportions the total costs that are to be borne by those paying impact fees among various types of developments. By way of illustration, but without limitation:

- a. In the case of road improvements, the impact fee may be related to the number of trips per day generated by different types of uses according to recognized estimates;
- b. In the case of improvements to schools the impact fee may be related to the size of the development, i.e., number of houses, and the anticipated number of students expected from said development according to recognized estimates, and the impact thereof on the need for additional school facilities in the county.

Sec. 6. *Capital Improvements Reserve Funds; Expenditures.* (a) Impact fees received by the county shall be deposited in a Capital Improvements Reserve Fund. Such funds may be expended only on the type of capital improvements for which such impact fees were established, and then only in accordance with the provisions of subsection (b) of this section.

(b) In order to ensure that impact fees paid by a particular development are expended on capital improvements that benefit that development, the county may establish for each category of capital improvement for which it collects an impact fee at least two geographical districts or zones, and impact fees generated by developments within those districts or zones must be spent on improvements that are located within or that benefit property located within those districts or zones.

Sec. 7. *Credits for Improvements.* An ordinance adopted under this act shall make provision for credits against required fees when a developer installs improvements of a type that generally would be paid for by the county out of a capital reserve account funded by impact fees. The ordinance may spell out the circumstances under which a developer will be allowed to install such improvements and receive such credits.

Sec. 8. *Appeals Procedure.* An ordinance adopted under this act may provide that any person aggrieved by a decision regarding an impact fee may appeal to the County Board of Adjustment. If the ordinance establishes an appeal procedure, it shall spell out the time

within which the appeal must be taken to the Board of Adjustment, the possible grounds for an appeal and the board's authority in the matter, whether the fee must be paid prior to resolution of the appeal, and other procedural or substantive matters related to appeals. Any decision by the Board of Adjustment shall be subject to review by the superior court within the county by proceedings in the nature of *certiorari* in the same manner as is provided in G.S. 153A-345(e).

Sec. 9. *Payment of Impact Fees.* An ordinance adopted under this act shall spell out when in the process of development approval and construction impact fees shall be paid and by whom. By way of illustration, and without limitation, the ordinance may provide that an applicant for a building permit shall submit the impact fee along with the permit application and that building permits shall not be issued until the impact fee has been paid.

Sec. 10. *Refunds.* If this title or any ordinance adopted hereunder is declared to be unconstitutional or otherwise invalid by any court of competent jurisdiction, then any impact fees collected thereunder shall be refunded to the person paying them together with interest at the same rate paid by the Secretary of Revenue on refunds for tax overpayments.

Sec. 11. *Limitation on Actions.* (a) Any action contesting the validity of an ordinance adopted pursuant to this title must be commenced not later than nine months after the effective date of such ordinance.

(b) Any action seeking to recover an impact fee must be commenced not later than nine months after the impact fee is paid.

Sec. 12. All laws and clauses of laws in conflict with this title are hereby repealed.

Sec. 12.1. This title applies to Chatham County only.

TITLE IV. PITTSBORO IMPACT FEES.

Sec. 13. The Charter of the Town of Pittsboro, being Chapter 348, Session Laws of 1973, as amended is amended by adding a new Article to read:

"Article XIV. Impact Fees.

"Sec. 14.1. *Impact Fees Authorized.*--(a) The Town Board of Commissioners may provide by ordinance for a system of impact fees to be paid by developers to help defray the costs to the Town of constructing certain capital improvements, the need for which is created in substantial part by the new development that takes place within the Town and its extraterritorial planning area.

(b) For purposes of this Article, the term capital improvements includes capital improvements to public streets, bridges, sidewalks, greenways, water and sewer, bikeways, on and off street surface water

drainage ditches, pipes, culverts, other drainage facilities, public schools, and public recreation facilities.

(c) An ordinance adopted under this Article may be made applicable to all development that occurs within the town and its extraterritorial planning area, as established by local act or pursuant to the procedures set forth in G.S. 160A-360.

(d) The Town may, with the approval of the Chatham County Board of Commissioners, construct capital improvements outside the Town limits but within the Town's extraterritorial planning area.

"Sec. 14.2. *Amount of Fees.*—(a) In establishing the amount of any impact fee, the Town shall endeavor to approach the objective of having every development contribute to a capital improvements fund an amount of revenue that bears a reasonable relationship to that development's fair share of the costs of the capital improvements that are needed in part because of that development. In fulfilling this objective, the Town Board of Commissioners shall, among other steps and actions:

- (1) Estimate the total cost of improvements by category (e.g., streets, sidewalks, drainage ways, etc.) that will be needed to provide in a reasonable manner for the public health, safety and welfare of persons residing within the Town and its extraterritorial planning area during a reasonable planning period not to exceed 20 years. The Council may divide the Town and its extraterritorial area into two or more districts and estimate the costs of needed improvements within each district. These estimates shall be periodically reviewed and updated, and the planning period used may be changed from time to time.
- (2) Establish a percentage of the total costs of each category of improvement that, in keeping with the objective set forth above, should fairly be borne by those paying the impact fee.
- (3) Establish a formula that fairly and objectively apportions the total costs that are to be borne by those paying impact fees among various types of developments. By way of illustration without limitation:
 - a. In the case of street improvements, the impact fee may be related to the number of trips per day generated by different types of uses according to recognized estimates;
 - b. In the case of drainage improvements, the impact fee may be related to the size of a development, the amount of impervious surface the development has, or other factors that bear upon the degree to which a development

contributes to the need for drainage improvements made at public expense.

"Sec. 14.3. *Capital Improvements Reserve Funds; Expenditures.* (a) Impact fees received by the Town shall be deposited in a capital improvements reserve fund or funds established under Chapter 159 of the General Statutes, Article 3, Part 2. Such funds may be expended only on the type of capital improvements for which such impact fees were established, and then only in accordance with the provisions of subsection (b) of this section.

(b) In order to ensure that impact fees paid by a particular development are expended on capital improvement that benefit that development, the Town may establish for each category of capital improvement for which it collects an impact fee at least two geographical districts or zones, and impact fees generated by developments within those districts or zones must be spent on improvements that are located within or that benefit property located within those districts or zones.

"Sec. 14.4. *Credits for Improvements.* An ordinance adopted under this Article shall make provision for credits against required fees when a developer installs improvements of a type that generally would be paid for by the Town out of a capital reserve account funded by impact fees. The ordinance may spell out the circumstances under which a developer will be allowed to install such improvements and receive such credits.

"Sec. 14.5. *Appeals Procedure.* An ordinance adopted under this Article may provide that any person aggrieved by a decision regarding an impact fee may appeal to the Pittsboro Board of Adjustment. If the ordinance establishes an appeal procedure, it shall spell out the time within which the appeal must be taken to the Board of Adjustment, the possible grounds for an appeal and the board's authority in the matter, whether the fee must be paid prior to resolution of the appeal, and other procedural or substantive matters related to appeals. Any decision by the Board of Adjustment shall be subject to review by the superior court by proceedings in the nature of *certiorari* in the same manner as is provided in G.S. 160A-388(e).

"Sec. 14.6. *Payment of Impact Fees.* An ordinance adopted under this Article shall spell out when in the process of development approval and construction impact fees shall be paid and by whom. By way of illustration without limitation, the ordinance may provide that an applicant for a building permit shall submit the impact fee along

with the permit application and that building permits shall not be issued until the impact fee has been paid.

"Sec. 14.7. *Refunds*. If this Article or any ordinance adopted thereunder is declared to be unconstitutional or otherwise invalid, then any impact fees collected shall be refunded thereunder to the person paying them together with interest at the same rate paid by the Secretary of Revenue on refunds for tax overpayments.

"Sec. 14.8. *Limitations on Actions*. (a) Any action contesting the validity of an ordinance adopted under this Article must be commenced not later than nine months after the effective date of such ordinance.

(b) Any action seeking to recover an impact fee must be commenced not later than nine months after the impact fee is paid."

TITLE V. CHAPEL HILL HOUSING.

Sec. 14. Findings and declarations. It is hereby found and declared that there is a serious shortage of decent, safe and sanitary housing available at low prices or rentals to persons and families of low and moderate income, and that private enterprise without assistance has been unable to meet that need in the Town of Chapel Hill. These conditions contribute to urban blight and retard sound development and redevelopment, thereby necessitating the following provisions to alleviate such conditions in the public interest.

Sec. 15. In addition to the other authority granted by law, the Town of Chapel Hill may engage in and appropriate and expend any public funds for housing programs and activities for the benefit of low and moderate income persons, and to engage in the following activities for the benefit of low and moderate income persons: programs of assistance and financing of rehabilitation efforts, including direct repair and the making of grants or loans; the purchase, lease or disposition of property for housing sites; and the construction, reconstruction, improvement or alteration of housing or housing projects. The Town of Chapel Hill may enter into contracts or agreements with any person, association, partnership, corporation or another governmental agency to undertake, carry out or otherwise exercise the authority granted by this section. This authority shall be considered a part of the Town's Community Development enabling authority.

Sec. 16. This Title shall apply to the Town of Chapel Hill only.

TITLE VI. ORANGE COUNTY IMPACT FEES.

Sec. 17. G.S. 153A-331 is amended by identifying the existing provisions as subsection (a) and by adding new subsections to read:

"(b) Impact Fees Authorized.

- (1) Orange County may provide by ordinance for a system of impact fees to be paid by developers to help defray the costs to the County of constructing certain capital improvements, the need for which is created in substantial part by the new development that takes place within the County.
- (2) For purposes of this subsection, the term capital improvements includes the acquisition of land for open space and greenways, capital improvements to public streets, schools, bridges, sidewalks, bikeways, on and off street surface water drainage ditches, pipes, culverts, other drainage facilities, water and sewer facilities and public recreation facilities.
- (3) An ordinance adopted under this subsection may be made applicable to all development that occurs within the County.

(c) Amount of Fees. In establishing the amount of any impact fee, the County shall endeavor to approach the objective of having every development contribute to a capital improvements fund an amount of revenue that bears a reasonable relationship to that development's fair share of the costs of the capital improvements that are needed in part because of that development. In fulfilling this objective, the County shall, among other steps and actions:

- (1) Estimate the total cost of improvements by category (e.g., streets, sidewalks, drainage ways, etc.) that will be needed to provide in a reasonable manner for the public health, safety and welfare of persons residing within the County during a reasonable planning period not to exceed 20 years. The Board of County Commissioners may divide the County into two or more districts and estimate the costs of needed improvements within each district. These estimates shall be periodically reviewed and updated and the planning period used may be changed from time to time.
- (2) Establish a percentage of the total costs of each category of improvement that, in keeping with the objective set forth above, should fairly be borne by those paying the impact fee.
- (3) Establish a formula that fairly and objectively apportions the total costs that are to be borne by those paying impact fees among various types of developments. By way of illustration without limitation:
 - a. In the case of street improvements, the impact fee may be related to the number of trips per day generated by different types of uses according to recognized

estimates;

- b. In the case of drainage improvements, the impact fee may be related to the size of a development, the amount of impervious surface the development has, or other factors that bear upon the degree to which a development contributes to the need for drainage improvements made at public expense.

(d) Capital Improvements Reserve Funds: Expenditures.

- (1) Impact fees received by the County shall be deposited in a capital improvements reserve fund or funds established under Chapter 159 of the General Statutes, Article 3, Part 2. Such funds may be expended only on the type of capital improvements for which such impact fees were established, and then only in accordance with the provision of subsection (2) of this section.
- (2) In order to ensure that impact fees paid by a particular development are expended on capital improvements that benefit that development, the County may establish for each category of capital improvement for which it collects an impact fee at least two geographical districts or zones, and impact fees generated by developments within those districts or zones must be spent on improvements that are located within or that benefit property located within those districts or zones.

(e) Credits for Improvements. An impact fee ordinance shall make provision for credits against required fees when a developer installs improvements of a type that generally would be paid for by the County out of a capital reserve account funded by impact fees. The ordinance may spell out the circumstances under which a developer will be allowed to install such improvements and receive such credits.

(f) Appeals Procedure. An ordinance authorizing impact fees as provided herein may provide that any person aggrieved by a decision regarding an impact fee may appeal to the Orange County Board of Adjustment. If the ordinance establishes an appeals procedure, it shall spell out the time within which the appeal must be taken to the board of adjustment, the possible grounds for an appeal and the board's authority in the matter, whether the fee must be paid prior to resolution of the appeal, and other procedural or substantive matters related to appeals. Any decision by the board of adjustment shall be subject to review by the superior court by proceedings in the nature of *certiorari* in the same manner as is provided in G.S. 153A-345.

(g) **Payment of Impact Fees.** An ordinance authorizing impact fees as herein provided shall spell out when in the process of development approval and construction impact fees shall be paid and by whom. By way of illustration without limitation, the ordinance may provide that an applicant for a building permit shall submit the impact fee along with the permit application and that building permits shall not be issued until the impact fee has been paid.

(h) **Refunds.** If this section or any ordinance adopted thereunder is declared to be unconstitutional or otherwise invalid, then any impact fees collected shall be refunded to the person paying them together with interest at the rate established under G.S. 105-241.1, being the same rate paid by the Secretary of Revenue on refunds for tax overpayments.

(i) **Limitations on Actions.**

- (1) Any action contesting the validity of an ordinance adopted as herein provided must be commenced not later than nine months after the effective date of such ordinance.
- (2) Any action seeking to recover an impact fee must be commenced not later than nine months after the impact fee is paid."

Sec. 17.1. Section 17 of this act shall apply only to Orange County, and applies only within the planning jurisdiction of Orange County.

Sec. 18. G.S. 153A-340 is amended by identifying the existing provisions as subsection (a) and by adding new subsections to read:

"(b) **Impact Fees Authorized.**

- (1) Orange County may provide by ordinance for a system of impact fees to be paid by developers to help defray the costs to the County of constructing certain capital improvements, the need for which is created in substantial part by the new development that takes place within the County.
- (2) For purposes of this subsection, the term capital improvements includes the acquisition of land for open space and greenways, capital improvements to public streets, schools, bridges, sidewalks, bikeways, on and off street surface water drainage ditches, pipes, culverts, other drainage facilities, water and sewer facilities and public recreation facilities.
- (3) An ordinance adopted under this subsection may be made applicable to all development that occurs within the County.

(c) **Amount of Fees.** In establishing the amount of any impact fee, the County shall endeavor to approach the objective of having every development contribute to a capital improvements fund an amount of

revenue that bears a reasonable relationship to that development's fair share of the costs of the capital improvements that are needed in part because of that development. In fulfilling this objective, the County shall, among other steps and actions:

- (1) Estimate the total cost of improvements by category (e.g., streets, sidewalks, drainage ways, etc.) that will be needed to provide in a reasonable manner for the public health, safety and welfare of persons residing within the County during a reasonable planning period not to exceed 20 years. The Board of County Commissioners may divide the County into two or more districts and estimate the costs of needed improvements within each district. These estimates shall be periodically reviewed and updated and the planning period used may be changed from time to time.
- (2) Establish a percentage of the total costs of each category of improvement that, in keeping with the objective set forth above, should fairly be borne by those paying the impact fee.
- (3) Establish a formula that fairly and objectively apportions the total costs that are to be borne by those paying impact fees among various types of developments. By way of illustration without limitation:
 - a. In the case of street improvements, the impact fee may be related to the number of trips per day generated by different types of uses according to recognized estimates;
 - b. In the case of drainage improvements, the impact fee may be related to the size of a development, the amount of impervious surface the development has, or other factors that bear upon the degree to which a development contributes to the need for drainage improvements made at public expense.
- (d) Capital Improvements Reserve Funds: Expenditures.
 - (1) Impact fees received by the County shall be deposited in a capital improvements reserve fund or funds established under Chapter 159 of the General Statutes, Article 3, Part 2. Such funds may be expended only on the type of capital improvements for which such impact fees were established, and then only in accordance with the provision of subsection (2) of this section.
 - (2) In order to ensure that impact fees paid by a particular development are expended on capital improvements that benefit that development, the County may establish for each category of capital improvement for which it collects an

impact fee at least two geographical districts or zones, and impact fees generated by developments within those districts or zones must be spent on improvements that are located within or that benefit property located within those districts or zones.

(e) Credits for Improvements. An impact fee ordinance shall make provision for credits against required fees when a developer installs improvements of a type that generally would be paid for by the County out of a capital reserve account funded by impact fees. The ordinance may spell out the circumstances under which a developer will be allowed to install such improvements and receive such credits.

(f) Appeals Procedure. An ordinance authorizing impact fees as provided herein may provide that any person aggrieved by a decision regarding an impact fee may appeal to the Orange County Board of Adjustment. If the ordinance establishes an appeals procedure, it shall spell out the time within which the appeal must be taken to the board of adjustment, the possible grounds for an appeal and the board's authority in the matter, whether the fee must be paid prior to resolution of the appeal, and other procedural or substantive matters related to appeals. Any decision by the board of adjustment shall be subject to review by the superior court by proceedings in the nature of *certiorari* in the same manner as is provided in G.S. 153A-345.

(g) Payment of Impact Fees. An ordinance authorizing impact fees as herein provided shall spell out when in the process of development approval and construction impact fees shall be paid and by whom. By way of illustration without limitation, the ordinance may provide that an applicant for a building permit shall submit the impact fee along with the permit application and that building permits shall not be issued until the impact fee has been paid.

(h) Refunds. If this section or any ordinance adopted thereunder is declared to be unconstitutional or otherwise invalid, then any impact fees collected shall be refunded to the person paying them together with interest at the rate established under G.S. 105-241.1, being the same rate paid by the Secretary of Revenue on refunds for tax overpayments.

(i) Limitations on Actions.

(1) Any action contesting the validity of an ordinance adopted as herein provided must be commenced not later than nine months after the effective date of such ordinance.

- (2) Any action seeking to recover an impact fee must be commenced not later than nine months after the impact fee is paid."

Sec. 18.1. Section 18 of this act shall apply only to Orange County, and applies only within the planning jurisdiction of Orange County.

TITLE VII. ORANGE COUNTY DISCLOSURE.

Sec. 19. Every member of the Board of Commissioners of Orange County shall disclose any legal, equitable, beneficial or contractual interest he/she or his/her spouse may have in any real property in Orange County. The real property which must be disclosed includes all real property which any Board member or his/her spouse holds title to, individually or jointly, any real property held in trust as well as any pecuniary interest he/she may have in any business, firm, or corporation of whatever nature, which holds title to or has any ownership interest in any real property within Orange County. Such disclosure shall contain the general location of the real property, but need not include its value.

Sec. 20. Every member of the Board of Commissioners of Orange County shall disclose any legal, equitable, beneficial or contractual interest he/she may have in or with any business, firm, or corporation, of whatever nature, which is doing business with Orange County pursuant to contracts which have been awarded by Orange County.

Sec. 21. Every member of the Board of County Commissioners of Orange County shall disclose any legal, equitable, beneficial or contractual interest he/she may have in any business, firm, or corporation, of whatever nature, which is attempting to secure the award of a bid from Orange County or the approval of any Board or Agency of Orange County.

Sec. 22. The disclosures required in Sections 19, 20 and 21 shall be in writing and filed with the Clerk of Superior Court of Orange County and with the Clerk to the Board of Commissioners of Orange County.

Sec. 23. The written disclosures required in Sections 19, 20 and 21 shall be made within the following time periods which are applicable:

(1) the later of 30 days after the effective date of this title or 30 days after the Board member has assumed office;

(2) the earlier of 30 days of the acquisition of any legal, equitable, beneficial or contractual interest in the property or business, firm, or corporation required to be disclosed in Sections 19, 20 and 21 or prior to the award by Orange County of a contract with or a permit or other approval to a business, firm, or corporation

required to be disclosed in Sections 20 and 21.

Sec. 24. Subject to the limitations contained in this section, every Board member who has an interest required to be disclosed by this title shall disqualify himself/herself from voting on any matter involving any such interest which comes for official action before the Board of County Commissioners of Orange County. The following interests do not require disqualification:

(1) interest in real property which must be disclosed in Section 1 provided the issue before the Board of Commissioners is one of policy that affects the real property disclosed no differently than all other property similarly situated.

(2) an interest in business, firm, or corporation which is negligible from the point of view of the operation of the business, firm, or corporation.

Sec. 25. Any member who violates any provision of this title shall be guilty of a misdemeanor and may be fined not more than one thousand dollars (\$1,000) or imprisoned not more than one year, or both. Any member who is convicted of a wilful second violation of any provision of this act shall forfeit his/her elected or appointed office, and such office shall be considered vacant as of the date of the final judgment of conviction.

Sec. 26. This Title shall apply only to Orange County.

TITLE VIII. PITTSBORO PARKING.

Sec. 27. (a) G.S. 20-162.1 is amended by deleting "one dollar (\$1.00)", and substituting "not more than five dollars (\$5.00)".

(b) This section applies to the Town of Pittsboro only.

Sec. 28. (a) Whenever evidence shall be presented in any court of the fact that any automobile, truck, or other vehicle was found upon any street, alley or other public place contrary to and in violation of the provisions of any municipal ordinance limiting the time during which any such vehicle may be parked or prohibiting or otherwise regulating the parking of any such vehicle, it shall be *prima facie* evidence in any court in the State of North Carolina that such vehicle was parked and left upon such street, alley or public way or place by the person, firm or corporation in whose name such vehicle is then registered and licensed according to the records of the department or agency of the State of North Carolina, by whatever name designated, which is empowered to register such vehicles and to issue licenses for their operation upon the streets and highways of this State; provided, that no evidence tendered or presented under the authorization contained in this section shall be admissible or competent in any respect in any court or tribunal, except in cases concerned solely with violation of ordinances limiting, prohibiting or otherwise regulating

the parking of automobiles or other vehicles upon public streets, highways, or other public places.

(b) The *prima facie* rule of evidence established by subsection (a) shall not apply to the registered owner of a leased or rented vehicle parked in violation of law when said owner can furnish sworn evidence that the vehicle was, at the time of the parking violation, leased or rented, to another person. In such instances, the owner of the vehicle shall, within a reasonable time after notification of the parking violation, furnish to the courts the name and address of the person or company who leased or rented the vehicle.

(c) This section only applies as to civil penalties under G.S. 160A-175(c), and only applies where the civil penalty under the ordinance does not exceed five dollars (\$5.00).

(d) This section applies to the Town of Pittsboro only.

TITLE IX. CHATHAM ZONING NOTICES.

Sec. 29. (a) Chapter 595, Session Laws of 1985, is repealed.

(b) Effective January 1, 1988, Chapter 595, Session Laws of 1985, is reenacted.

(c) This section applies only to Chatham County and incorporated municipalities located therein.

TITLE X. PITTSBORO EXTRATERRITORIAL ASSESSMENTS.

Sec. 30. (a) A town has the same authority within its extraterritorial planning jurisdiction as established by Article 19 of Chapter 160A of the General Statutes or established by local act to make special assessments under G.S. 160A-216(3) or (4), but such assessments must be held in abeyance without interest until improvements on the assessed property are actually connected to the water or sewer system.

(b) This section applies only to the Town of Pittsboro.

TITLE XI. PITTSBORO ANNEXATION

Sec. 30.1. Article II of the Charter of the Town of Pittsboro, Chapter 348, Session Laws of 1973, is amended by adding a new section to read:

"Sec. 2.3. *Inco Statellite Corporate Boundaries.* The area more particularly described hereinafter shall be annexed to and a part of the town of Pittsboro as follows:

All that certain tract or parcel of land located in Center Township, Chatham County, North Carolina, being more particularly described as follows:

'BEGINNING at an iron pin in the southeast corner of property retained by K. W. Cooper and W. D. Harris, said iron pin also being the western margin of property of M. H. White, which BEGINNING point is located the following courses and distances from North

Carolina Geological Survey monument "Gunter" (which monument has N. C. coordinates North 716,720.247, East 1,954,239.754); South 10 degrees 13 minutes 33 seconds West 2,465.11 feet to an iron pin and thence South 10 degrees 09 minutes 36 seconds East 298.98 feet to an iron pin to said BEGINNING point; thence from said BEGINNING point along M. H. White's western boundary South 10 degrees 09 minutes 36 seconds East 1,252.02 feet to an iron pin; thence continuing along W. H. White's western boundary South 13 degrees 40 minutes 54 seconds East 744.93 feet to a point in the centerline of Roberson's Creek (also known as Robertson's Creek), said point being the intersection of Roberson's Creek and the mouth of the branch thence along the centerline of Roberson's Creek the following courses and distances: South 60 degrees 25 minutes 50 seconds West 258.54 feet to a point; thence South 83 degrees 14 minutes 36 seconds West 535.80 feet to a point; thence North 87 degrees 52 seconds 09 minutes West 461.96 feet to a point; thence South 58 degrees 31 minutes 12 seconds West 198.47 feet to a point; thence North 59 degrees 32 minutes 32 seconds West 455.56 feet to a point; thence North 68 degrees 46 minutes 53 seconds West 416.48 feet to a point; thence South 77 degrees 08 minutes 43 seconds West 103.57 feet to a point; thence South 77 degrees 08 minutes 43 seconds West 103.57 feet to a point; thence North 31 degrees 17 minutes 31 seconds West 192.17 feet to a point; thence North 14 degrees 10 minutes 07 seconds West 255.51 feet to a point; thence North 09 degrees 36 minutes 09 seconds West 369.87 feet to a point; thence North 06 degrees 57 minutes 19 seconds West 357.44 feet to a point; thence North 26 degrees 53 minutes 46 seconds East 160.00 feet to a point; thence North 51 degrees 43 minutes 19 seconds East 209.82 feet to a point; thence North 35 degrees 49 minutes 07 seconds West 138.72 feet to a point; thence North 31 degrees 11 minutes 13 seconds West 147.24 feet to a point; thence leaving the centerline of Robertson's Creek North 41 degrees 31 minutes 30 seconds East 20.13 feet to an iron pin; thence continuing North 41 degrees 31 minutes 30 seconds East 289.87 feet to an iron pin in the southern boundary of property retained by K. W. Cooper and W. D. Harris; thence along the Cooper and Harris southern boundary North 90 degrees 00 minutes 00 seconds East 1,854.87 feet to the point and place of BEGINNING.

The above description is taken from that certain survey by Law Engineering Testing Company of the Novamet Facility for Inco Alloys International, Inc., dated March 4, 1986 and last revised May 28, 1986, which survey is incorporated herein by reference for a more particular description. The above described property contains approximately 105.13 acres, and is a portion of the K. W. Cooper and W. D. Harris property described in Deed Book 484, Page 647, of the

Chatham County Registry.'

Sec. 30.2. Section 30.1 of this act shall be effective July 1, 1988."

Sec. 31. Nothing in this act authorizes any county or town to acquire any rights-of-way for the State Highway System, or authorizes any county or town to construct any street or highway on the State Highway System.

Sec. 32. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 23rd day of June, 1987.

H.B. 807

CHAPTER 461

AN ACT TO AUTHORIZE THE ENVIRONMENTAL MANAGEMENT COMMISSION TO CONSIDER THE FINANCIAL CAPABILITY AND PERFORMANCE HISTORY OF APPLICANTS FOR AIR AND WATER DISCHARGE PERMITS PRIOR TO GRANTING SUCH PERMITS AND TO AMEND THE REQUIREMENTS APPLICABLE TO HAZARDOUS WASTE FACILITY PERMITS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143-215.1(b) reads as rewritten:

"(b) Environmental Management Commission's Power as to Permits. The Environmental Management Commission shall act on all permits so as to prevent, so far as reasonably possible, considering relevant standards under State and federal laws, any significant increase in pollution of the waters of the State from any new or enlarged sources.

The Environmental Management Commission shall have the power:

(1) To grant a permit with such conditions attached as the Environmental Management Commission believes necessary to achieve the purposes of this Article;

(1a) To require that an applicant satisfy the Commission that the applicant, or any parent or subsidiary corporation if the applicant is a corporation:

- a. Is financially qualified to carry out the activity for which the permit is required under subsection (a); and
- b. Has substantially complied with the effluent standards and limitations and waste management treatment practices applicable to any activity in which the applicant has previously engaged, and has been in substantial compliance with other federal and state laws, regulations, and rules for the protection of the

environment;

- (2) Repealed by Session Laws 1975, c. 583, s. 4.
- (3) To modify or revoke any permit upon not less than 60 days' written notice to any person affected.

No permit shall be denied and no condition shall be attached to the permit, except when the Environmental Management Commission finds such denial or such conditions necessary to effectuate the purposes of this Article."

Sec. 2. G.S. 143-215.108(b) reads as rewritten:

"(b) The Environmental Management Commission shall act upon all applications for permits so as to effectuate the purpose of this section, by reducing existing air pollution and preventing, so far as reasonably possible, any increased pollution of the air from any additional or enlarged sources.

The Environmental Management Commission shall have the power:

- (1) To grant and renew a permit with such conditions attached as the Environmental Management Commission believes necessary to achieve the purposes of this section;
- (2) To grant and renew any temporary permit for such period of time as the Environmental Management Commission shall specify even though the action allowed by such permit may result in pollution or increase pollution where conditions make such temporary permit essential;
- (3) To modify or revoke any permit upon not less than 60 days' written notice to any person affected;
- (4) To require all applications for permits and renewals to be in writing and to prescribe the form of such applications;
- (5) To request such information from an applicant and to conduct such inquiry or investigation as it may deem necessary and to require the submission of plans and specifications prior to acting on any application for a permit; ~~and~~

(5a) To require that an applicant satisfy the Commission that the applicant, or any parent or subsidiary corporation if the applicant is a corporation:

- a. Is financially qualified to carry out the activity for which a permit is required under subsection (a); and
- b. Has substantially complied with the air quality and emission control standards applicable to any activity in which the applicant has previously engaged, and has been in substantial compliance with federal and state laws, regulations, and rules for the protection of the environment;

- (6) To adopt rules, as it deems necessary, establishing the form of applications and permits and procedures for the granting or denial of permits and renewals pursuant to this section; and all permits, renewals and denials shall be in ~~writing~~, writing;
- (7) To prohibit any stationary source within the State from emitting any air pollutant in amounts which will prevent attainment or maintenance by any other state of any national ambient air quality standard, or interference with measures required to be included in the applicable implementation plan for any other state to prevent deterioration of air quality or protect visibility.

The Environmental Management Commission shall act on all applications for permits as rapidly as possible, but it shall have the power to request such information from an applicant and to conduct such inquiry or investigation as it may deem necessary prior to acting on any application for a permit. Failure of the Environmental Management Commission to take action on an application for a permit within 90 days after all data, plans, specifications and other required information have been furnished by the applicant shall be deemed as approval of such application.

Any person whose application for a permit or renewal thereof is denied or is granted subject to conditions which are unacceptable to such person or whose permit is modified or revoked shall have the right to a hearing before the Environmental Management Commission upon making demand therefor within 30 days following the giving of notice by the Environmental Management Commission as to its decision upon such application. Unless such a demand for a hearing is made, the decision of the Environmental Management Commission on the application shall be final and binding. If demand for a hearing is made, the procedure with respect thereto and with respect to all further proceedings shall be as specified in G.S. 143-215.4 and in any applicable rules of procedure of the Environmental Management Commission."

Sec. 3. G.S. 130A-295(a) reads as rewritten:

"(a) An applicant for a permit for a hazardous waste facility shall satisfy the Department that:

- (1) Any hazardous waste facility constructed or operated by the applicant, or any parent or subsidiary corporation if the applicant is a corporation, has been operated in accordance, with sound waste management practices and in substantial compliance with federal and ~~State~~ state laws, regulations and rules; and

- (2) The applicant, or any parent or subsidiary corporation if the applicant is a corporation, is financially qualified to operate the proposed hazardous waste facility."

Sec. 4. This act is effective upon ratification and shall apply to any application for a permit made after the date of ratification.

In the General Assembly read three times and ratified this the 24th day of June, 1987.

S.B. 740

CHAPTER 462

AN ACT TO PROVIDE THAT WHEN A CITY OR COUNTY OR A LOCAL BOARD OF EDUCATION APPEALS A JUDGMENT, STAYING THE ENFORCEMENT OF THE JUDGMENT, THE CITY OR THE COUNTY OR THE LOCAL BOARD OF EDUCATION SHALL NOT BE REQUIRED TO POST A BOND.

The General Assembly of North Carolina enacts:

Section 1. G.S. 1A-1, Rule 62(e) reads as rewritten:

"(e) Stay in favor of North Carolina, city, county, local board of education, or agency thereof. When an appeal is taken by the State of North Carolina, or a city or a county thereof, a local board of education, or an officer in his official capacity or agency thereof or by direction of any department or agency of the State of North Carolina or a city or county thereof or a local board of education and the operation or enforcement of the judgment is stayed, no bond, obligation, or other security shall be required from the appellant."

Sec. 2. G.S. 1-285(b) reads as rewritten:

"(b) The provisions of this section do not apply to the State of North Carolina ~~or its agencies~~, a city or a county or a local board of education, an officer thereof in his official capacity, or an agency thereof."

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 24th day of June, 1987.

H.B. 319

CHAPTER 463

AN ACT TO ENCOURAGE THE MARKING OF OYSTER AND CLAM BOTTOM AREAS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 113-208(a) reads as rewritten:

"(a) It is unlawful for any person, other than the holder of private shellfish rights, to take or attempt to take shellfish from any privately leased, franchised, or deeded shellfish bottom area without written authorization of the holder and with actual knowledge it is a private shellfish bottom area. Actual knowledge will be presumed when the shellfish are taken or attempted to be taken:

- (1) from within the confines of posted boundaries of the area as identified by signs, whether the whole or any part of the area is posted, or
- (2) when the area has been regularly posted and identified and the person knew the area to be the subject of private shellfish rights.

A violation of this section shall constitute a misdemeanor, punishable by imprisonment not to exceed 30 days, or by a fine of not less than twenty-five dollars (\$25.00) nor more than two hundred fifty dollars (\$250.00), or both such fine and imprisonment. The written authorization shall include the lease number or deed reference, name and address of authorized person, date of issuance, and date of expiration, and it must be signed by the holder of the private shellfish right. Identification signs shall include the lease number or deed reference and the name of the holder."

Sec. 2. G.S. 113-208 is amended by rewriting the catch line to read "*Protection of private shellfish rights.*"

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 24th day of June, 1987.

H.B. 328

CHAPTER 464**AN ACT TO EXPAND THE AUTHORITY OF CITIES AND HOUSING AUTHORITIES TO PROVIDE HOUSING FOR PERSONS OF LOW AND MODERATE INCOME.**

Whereas, the Federal Government has in recent years significantly reduced its support of housing programs for persons of low and moderate income; and

Whereas, growing federal deficits suggest continued and renewed pressure for further reduction and even elimination of federal housing programs; and

Whereas, the reduction in federal support will unavoidably increase the need for local government action, with or without federal

support, in providing housing for persons of low and moderate income; Now, therefore.

The General Assembly of North Carolina enacts:

Section 1. The existing provisions of G.S. 157-2 are designated as subsection (a) of that section and a new subsection (b) is added to read:

"(b) It is hereby further declared that there is a serious shortage of decent, safe and sanitary housing in North Carolina that can be afforded by persons and families of moderate income; that it is in the best interest of the State to encourage programs to provide housing for such persons without imposing on them undue financial hardship; and that in undertaking such programs a housing authority is promoting the health, welfare and prosperity of all citizens of the State and is serving a public purpose for the benefit of the general public."

Sec. 2. G.S. 157-3(12) is rewritten to read:

"(12) 'Housing project' shall include all real and personal property, buildings and improvements, stores, offices, lands for farming and gardening, and community facilities acquired or constructed or to be acquired or constructed pursuant to a single plan or undertaking:

- a. To demolish, clear, remove, alter or repair unsanitary or unsafe housing; and/or
- b. To provide safe and sanitary dwelling accommodations for persons of low income, or moderate income, or low and moderate income; and/or
- c. To provide safe and sanitary housing for persons of low income, through payment of rent subsidies from any source; and/or
- d. To provide grants, loans, interest supplements and other programs of financial assistance (including rent subsidies in furtherance of a program of home ownership) to persons of low income, or moderate income, or low and moderate income, so that such persons may become owners of their own housing or rehabilitate their own housing; and/or
- e. To provide grants, loans, interest supplements and other programs of financial assistance to public or private developers of housing for persons of low income, or moderate income, or low and moderate income.

'Housing project' also includes any project that provides housing for persons of other than low or moderate income, as long as at least twenty percent (20%) of the units in the project are set aside for the exclusive use of persons of low income.

The term 'housing project' may also be applied to the planning of the buildings and improvements, the acquisition of property, the demolition of existing structures, the construction, reconstruction, alteration and repair of the improvements and all other work in connection therewith."

Sec. 3. G.S. 157-3 is amended by adding two new subdivisions to read:

"(15a) 'Persons of low income' means persons in households the annual income of which, adjusted for family size, is not more than sixty percent (60%) of the local area median family income as defined by the most recent figures published by the U.S. Department of Housing and Urban Development.

(15b) 'Persons of moderate income' means persons deemed by the authority to require the assistance made available pursuant to this Chapter on account of insufficient personal or family income taking into consideration, without limitation, (i) the amount of the total income of such persons and families available for housing needs, (ii) the size of the person's family, (iii) the cost and condition of housing facilities available, and (iv) the eligibility of such persons and families for federal housing assistance of any type predicated upon a moderate or low and moderate income basis."

Sec. 4. Chapter 157 of the General Statutes is amended by adding a new section to read:

"§ 157-9.2. *Mixed income projects owned or operated by authorities.*-If an authority is the owner or operator of a housing project that includes units for persons of other than low or moderate income, the operating expenses of that project (or of all such projects, together, owned or operated by the authority) shall be met entirely from rents from the project (or projects) together with any rent subsidies provided to low income tenants in the project (or projects). No rent subsidy may be provided to any tenant who is not a person of low income, and no rent subsidy may be paid from bond proceeds."

Sec. 4.1. Chapter 157 of the General Statutes is amended by adding a new section to read:

"§ 157-9.3. *Multi-family rental housing projects.*--(a) If an authority owns, operates, or provides financial assistance to a multi-family rental housing project, at least twenty percent (20%) of the units in the project shall be set aside for the exclusive use of persons of low income. An authority may group projects being developed concurrently in order to meet the requirement of this subsection.

(b) If an authority provides financial assistance to a multi-family rental housing project, the authority shall establish, as a condition of the assistance, requirements and procedures that insure that all units

initially set aside for the exclusive use of persons of low income continue to be so used for at least 15 years after the initial date on which at least fifty percent (50%) of the units in the project are occupied."

Sec. 5. G.S. 157-29 is rewritten to read:

" § 157-29. *Rentals and tenant selection.*--(a) It is hereby declared to be the policy of this State that each housing authority shall manage and operate its housing projects in an efficient manner so as to enable it to fix the cost of dwelling accommodations for persons of low income at the lowest possible rates consistent with its providing decent, safe, and sanitary dwelling accommodations. No housing authority may construct or operate its housing projects so as to provide revenues for other activities of the city.

(b) In the operation or management of housing projects, or portions of projects, for persons of low income, an authority shall at all times observe the following duties with respect to rentals and tenant selection:

(1) It may rent or lease dwelling accommodations set aside for persons of low income only to persons who lack the amount of income which is necessary (as determined by the housing authority undertaking the project) to enable them, without financial assistance, to live in decent, safe, and sanitary dwellings, without overcrowding; and

(2) It may rent or lease dwelling accommodations to persons of low income only at rentals within the financial reach of such persons.

(c) An authority may not terminate or refuse to renew a rental agreement other than for a serious or repeated violation of a material term of the rental agreement such as (i) failure to make payments due under the rental agreement, if such payments were properly and promptly calculated according to applicable HUD regulation, without regard to fault on the part of the tenant, (ii) failure to fulfill the tenant obligations set forth in 24 C.F.R. Section 966.4(f) or other applicable provisions of federal law as they may be amended from time to time, or (iii) other good cause. Except in the case of failure to make payments due under a rental agreement, fault on the part of a tenant may be considered in determining whether good cause exists to terminate a rental agreement."

Sec. 6. G.S. 160A-209(c) is amended by adding a new subdivision (15a) to read:

"(15a) Housing. To undertake housing projects as defined in G.S. 157-3, and urban homesteading programs under G.S. 160A-457.2."

Sec. 7. G.S. 159-48(d) is amended by adding a new subdivision (7) at the end to read:

"(7) Providing housing projects for the benefit of persons of low income, or moderate income, or low and moderate income, including without limitation (i) construction or acquisition of projects to be owned by a city, redevelopment commission or housing authority, and (ii) loans, grants, interest supplements and other programs of financial assistance to persons of low income, or moderate income, or low and moderate income, and developers of housing for persons of low income, or moderate income, or low and moderate income. A housing project may provide housing for persons of other than low or moderate income, as long as at least twenty percent (20%) of the units in the project are set aside for housing for the exclusive use of persons of low income. No rent subsidy may be paid from bond proceeds."

Sec. 8. Chapter 160A of the General Statutes, Article 19, Part 8 is amended by adding a new Section 160A-457.2, to read:

"§ 160A-457.2. *Urban homesteading programs.*--A city may establish a program of urban homesteading, in which residential property of little or no value is conveyed to persons who agree to rehabilitate the property and use it, for a minimum number of years, as their principal place of residence. Residential property is considered of little or no value if the cost of bringing the property into compliance with the city's housing code exceeds sixty percent (60%) of the property's appraised value on the county tax records. In undertaking such a program a city may:

(1) Acquire by purchase, gift or otherwise, but not eminent domain, residential property specifically for the purpose of reconveyance in the urban homesteading program or may transfer to the program residential property acquired for other purposes, including property purchased at a tax foreclosure sale.

(2) Under procedures and standards established by the city, convey residential property by private sale under G.S. 160A-267 and for nominal monetary consideration to persons who qualify as grantees.

(3) Convey property subject to conditions that:

- (a) Require the grantee to use the property as his or her principal place of residence for a minimum number of years,
- (b) Require the grantee to rehabilitate the property so that it meets or exceeds minimum code standards,
- (c) Require the grantee to maintain insurance on the property,

- (d) Set out any other specific conditions (including, but not limited to, design standards) or actions that the city may require, and
- (e) Provide for the termination of the grantee's interest in the property and its reversion to the city upon the grantee's failure to meet any condition so established.

(4) Subordinate the city's interest in the property to any security interest granted by the grantee to a lender of funds to purchase or rehabilitate the property."

Sec. 9. Chapter 160A of the General Statutes, Article 12 is amended by adding a new section to read:

"§ 160A-278. *Lease of land for housing.*--A city may lease land upon such terms and conditions as it deems wise to any person, firm or corporation who will use the land to construct housing for the benefit of persons of low income, or moderate income, or low and moderate income. Such a housing project may also provide housing to persons of other than low or moderate income, as long as at least twenty percent (20%) of the units in the project are set aside for the exclusive use of persons of low income. Despite the provisions of G.S. 160A-272, a lease authorized pursuant to this section may be made by private negotiation and may extend for longer than 10 years. Property may be leased under this section only pursuant to a resolution of the council authorizing the execution of the lease adopted at a regular council meeting upon 10 days' public notice. Notice shall be given by publication describing the property to be leased, stating the value of the property, stating the proposed consideration for the lease, and stating the council's intention to authorize the lease."

Sec. 10. Subsection (b) of G.S. 160A-456 is amended by deleting the period at the end of the first sentence and adding:

", and may do so whether or not a redevelopment commission or housing authority is in existence in such city."

Sec. 11. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 24th day of June, 1987.

H.B. 549

CHAPTER 465

AN ACT TO PROVIDE FOR CONTINUED COMPLIANCE WITH THE FEDERAL VOTING ACCESSIBILITY FOR THE ELDERLY AND HANDICAPPED ACT.

The General Assembly of North Carolina enacts:

Section 1. Section 4 of Chapter 4, Session Laws, Extra Session of 1986, as amended by Section 4.1 of Chapter 1232, Session Laws of 1985, reads as rewritten:

"Sec. 4. This act is effective upon ratification, but expires as to elections held after July 1, August 31, 1987 1989."

Sec. 2. Chapter 163 of the General Statutes is amended by adding a new section to read:

"§ 163-69.2. *Accessible polling places.*--(a) The State Board of Elections shall promulgate rules to assure that any handicapped or elderly voter assigned to an inaccessible polling place, upon advance request of such voter, will be assigned to an accessible polling place. Such rules should allow the request to be made in advance of the day of the election.

(b) Words in this section have the meanings prescribed by P.L. 98-435."

Sec. 3. This act is effective upon ratification, except that Section 2 shall become effective with respect to elections held on or after September 1, 1987.

In the General Assembly read three times and ratified this the 24th day of June, 1987.

H.B. 623

CHAPTER 466

AN ACT TO ALLOW CRAVEN COUNTY TO EMPLOY ATTACHMENT OR GARNISHMENT FOR AMBULANCE SERVICES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 44-51.8 is amended by adding immediately after the word "Columbus," the word "Craven,".

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 24th day of June, 1987.

H.B. 634

CHAPTER 467

AN ACT TO ANNEX A CERTAIN AREA TO THE TOWN OF CASTALIA.

The General Assembly of North Carolina enacts:

Section 1. The corporate limits of the Town of Castalia are hereby enlarged and extended by annexing thereto the following described area:

BEGINNING at a new iron pipe in North Carolina S.R. 1321 (West Peachtree Street), said beginning point being the Northwest corner for the Dan Earl Richardson property; thence from said beginning point along the present Castalia city limits boundary S. 78 degrees 50' 39" E. 607.47 feet to a new iron pipe in the line of the M. T. Thomas Estate property; thence along the line of the M. T. Thomas Estate property S. 07 degrees 31' 48" E. 117.87 feet to an existing axle in the line of the M. T. Thomas Estate property; thence continuing along the line of the M. T. Thomas Estate property S. 05 degrees 38' 50" E. 205.32 feet to an existing axle in the line of the Charlie Richardson Heirs; thence along the line of the Charlie Richardson Heirs S. 82 degrees 03' 13" W. 228.84 feet to a new iron pipe on the Western right of way of Richardson Street; thence along the Western right of way of Richardson Street N. 04 degrees 49' 01" W. 180.57 feet to an iron stake on the Western right of way of Richardson Street; thence continuing along the Western right of way of Richardson Street N. 06 degrees 59' 44" W. 171.77 feet to a new iron pipe on the Western right of way of Richardson Street; thence along the line of the Charlie Richardson Heirs S. 80 degrees 33' 20" W. 350 feet to a new iron pipe, cornering; thence along the line of, now or formerly, Beird Perry Estate N. 07 degrees 57' 58" W. 178.92 feet to a new iron pipe in the North Carolina S.R. 1321 (West Peachtree Street), the point of BEGINNING containing 2.799 acres according to survey and plat of Bobbitt Surveying, P.A., dated March 27, 1987, entitled "Survey for Town of Castalia, Annexation Project #1-32787," said plat being recorded in Plat Book 16, Page 310, Nash County Registry, to which reference is hereby made for a more perfect description.

Sec. 2. The area herein annexed shall be subject to the provisions of G.S. 160A-58.10 from the date this act is ratified.

Sec. 3. All elections, ordinances, levy of taxes and other official acts of the Town of Castalia are validated.

Sec. 4. The election of Dan Earl Richardson to the Board of Commissioners of the Town of Castalia is specifically validated.

Sec. 5. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 24th day of June, 1987.

AN ACT TO AUTHORIZE THE TOWN OF CALABASH TO LEVY SPECIAL ASSESSMENTS TO MEET A PORTION OF THE COSTS OF CONSTRUCTING WATER LINES AND DISTRIBUTION SYSTEM PRIOR TO CONSTRUCTION OR COMPLETION OF SUCH A SYSTEM, SUBJECT TO A REFERENDUM.

Whereas, the Town of Calabash is without water distribution facilities, all water needs within the Town presently being met by private wells, and the health and safety of the Town requires construction of a water distribution system; and

Whereas, preliminary plans for installing a water distribution system and facilities at a cost of one hundred sixty thousand dollars (\$160,000) have been developed; and

Whereas, the Town of Calabash has currently within its general account a surplus of funds in the amount of forty thousand dollars (\$40,000); and

Whereas, the Town Council of the Town of Calabash, on the 9th day of March, 1987, did resolve that part of the costs of constructing the water distribution facility be met from special assessments against the property to be served and improved prior to construction or completion of the project and in the future (monies may be held in abeyance, without interest, until improvements have been connected and properties served in the sole discretion of the Town Council as provided by law); and

Whereas, the Town Council of the Town of Calabash has adopted a preliminary resolution of special assessment and that a public hearing thereon was duly held as provided by G.S. 160A-223, G.S. 160A-224; Now, therefore,

The General Assembly of North Carolina enacts:

Section 1. The Town Council of the Town of Calabash may levy special assessments to meet a projected seventy-five percent (75%) of water distribution facility construction cost. The assessment rolls will become effective on a date set by the Town Council that is at least 30 days following a formal advertising for bids of the proposed work. The Town Council shall levy the special assessments in accord with a schedule that it develops and that is based upon front footage of property on a street or abutting the project, the area of the land served or subject to being served, the value added to the land served by the project, the type of property being served (commercial or residential) or a combination of these factors. The maximum special assessment that the Town Council may levy against any property may not exceed

the greater of the following:

(1) Four hundred dollars (\$400.00) per 60 foot residential lot or fraction thereof.

(2) Three thousand dollars (\$3,000) for heavy commercial property.

(3) One thousand dollars (\$1,000) for light commercial property.

The Council may cause notice of the amount of assessment for each parcel of land assessed to be sent by mail to the owner thereof as shown on the tax records of the Town prior to confirmation of the assessment roll, any provision of G.S. 160A-224 to the contrary.

Sec. 2. The Town Council of the Town of Calabash may give owners of assessed property the option of paying the assessment either in cash or in installments, provided however, that the period over which such installments are paid does not exceed 90 days from the date the assessment roll is confirmed. Any portion of an assessment that is not paid within 30 days after publication of the notice that the assessment roll has been confirmed shall bear interest until paid at a rate to be fixed in the assessment resolution but not more than ten percent (10%) per annum. In the event payment is not made within 90 days, collection may be enforced in accordance with the law for foreclosure of property tax liens.

Sec. 3. In the event the execution of a contract or contracts covering the proposed work is not forthcoming within 120 days from the date the assessment roll is confirmed, all assessments for the purpose of meeting a portion of the costs of constructing water distribution facilities paid to the Town of Calabash shall be returned to each payee within 30 days with interest at not less than six percent (6%) per annum for the period each assessment is held by the Town; however, interest shall not be paid on any assessment funds for a period in excess of 90 days.

Sec. 4. All assessment funds received by the Town of Calabash may be deposited in a special interest bearing account and any interest earned and retained by the Town shall be used to offset expenses incurred with regards to the water distribution facilities.

Sec. 5. In levying the special assessments, the Town Council shall follow, insofar as practicable, the procedure set forth in Article X of Chapter 160A of the North Carolina General Statutes except as modified by this act.

Sec. 6. Sections 1 through 5 of this act shall become effective only if approved by the qualified voters of the Town of Calabash in a referendum. The referendum shall be conducted by the board of elections which conducts elections for that town. The date of the

referendum shall be November 3, 1987. The question on the ballot shall be:

"[] FOR authorizing the Town of Calabash to levy special assessments to meet a portion of the costs of constructing water lines and distribution systems prior to construction or completion of such a system.

[] AGAINST authorizing the Town of Calabash to levy special assessments to meet a portion of the costs of constructing water lines and distribution systems prior to construction or completion of such a system."

If a majority of the votes cast thereon are in favor of the question, then Sections 1 through 5 of this act shall become effective. Otherwise, they shall not. The election shall be conducted in accordance with Chapter 163 of the General Statutes, except as otherwise provided by this act.

Sec. 7. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 24th day of June, 1987.

H.B. 671

CHAPTER 469

AN ACT TO AUTHORIZE COMPANY POLICE OFFICERS TO CHARGE FOR INFRACTIONS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 74A-2(b) is amended by inserting between the word "misdemeanors" and the colon the following language: "and to charge for infractions".

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 24th day of June, 1987.

H.B. 956

CHAPTER 470

AN ACT TO ENABLE MEMBERS OF THE ASSOCIATION FOR RETARDED CITIZENS OF NORTH CAROLINA'S LIFEGUARDIANSHIP COUNCIL TO CLAIM OTHERWISE UNCLAIMED BODIES FOR BURIAL OR OTHER HUMANE AND CARING DISPOSITION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 130A-415 is amended by rewriting the catch line to read: "*Unclaimed bodies; bodies claimed by the Lifeguardianship Council of the Association for Retarded Citizens of North Carolina; disposition.--*".

Sec. 2. G.S.130A-415 is further amended by adding a new subsection to the end to read:

"(i) In addition to the other duties of the Commission of Anatomy, when the Commission of Anatomy is notified by the Lifeguardianship Council of the Association of Retarded Citizens of North Carolina, Inc., that the Council intends to claim a body, the Commission shall release the body to the Council. The Lifeguardianship Council shall notify the Commission of Anatomy within 24 hours after death of its intent to claim a body for burial or other humane and caring disposition."

Sec. 3. This act shall become effective October 1, 1987.

In the General Assembly read three times and ratified this the 24th day of June, 1987.

S.B. 263

CHAPTER 471

AN ACT TO PROVIDE AUTHORITY TO ESTABLISH LABORATORY CERTIFICATION FEES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 130A-326 reads as rewritten:

"§ 130A-326. *Powers of the Secretary.*--To carry out the provisions of this Article, the Secretary is authorized to:

(1) Administer and enforce the provisions of this Article, the drinking water rules and orders issued under this Article;

(2) Enter into agreements or cooperative arrangements with, or participate in related programs of other states, other state agencies, federal or interstate agencies, units of local government, educational institutions, local health departments or other organizations or individuals;

(3) Receive financial and technical assistance from the federal government and other public or private agencies;

(4) Require public water systems to take actions or make modifications as necessary to comply with the requirements of this Article or the drinking water rules;

(5) Prescribe policies and procedures necessary or appropriate to carry out the Secretary's function under this Article; ~~and~~

(6) Establish and collect fees to recover the costs of laboratory analyses performed for compliance with this Article. The fees shall not exceed two hundred dollars (\$200.00) for each analysis; and

(7) Establish and collect fees for certification and certification renewal of laboratories to perform analyses for compliance under this Article. The fees shall not exceed twenty dollars (\$20.00) per analyte certified. The minimum fee for certification or certification renewal shall be two hundred fifty dollars (\$250.00) per analyte category. The maximum fee for certification or certification renewal shall be six hundred dollars (\$600.00) per analyte category. The fees collected under authority of this subdivision shall be used to administer blind performance evaluation samples to certified laboratories to determine compliance with certification requirements, subject to appropriation for such purpose by the General Assembly."

Sec. 2. This act shall become effective October 1, 1987, and applies to certifications and certification renewals on and after this date.

In the General Assembly read three times and ratified this the 25th day of June, 1987.

S.B. 640

CHAPTER 472

AN ACT TO AUTHORIZE CALDWELL COUNTY TO LEVY A ROOM OCCUPANCY AND TOURISM DEVELOPMENT TAX.

The General Assembly of North Carolina enacts:

Section 1. Occupancy tax. (a) Authorization and scope. The Caldwell County Board of Commissioners may by resolution, after not less than 10 days' public notice and after a public hearing held pursuant thereto, levy a room occupancy tax of three percent (3%) of the gross receipts derived from the rental of any room, lodging, or similar accommodation furnished by a hotel, motel, inn, or similar place within the county that is subject to sales tax imposed by the State under G.S. 105-164.4(3). This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations.

(b) Collection. Every operator of a business subject to the tax levied under this section shall, on and after the effective date of the levy of the tax, collect the tax. This tax shall be collected as part of the charge for furnishing a taxable accommodation. The tax shall be stated and charged separately from the sales records, and shall be paid by the purchaser to the operator of the business as trustee for and on account of the county. The tax shall be added to the sales price and shall be passed on to the purchaser instead of being borne by the operator of the business. The county shall design, print, and furnish

to all appropriate businesses and persons in the county the necessary forms for filing returns and instructions to ensure the full collection of the tax. An operator of a business who collects the occupancy tax levied under this section may deduct from the amount remitted to the county a discount of three percent (3%) of the amount collected.

(c) Administration. The county shall administer a tax levied under this section. A tax levied under this section is due and payable to the county finance officer in monthly installments on or before the 15th day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the 15th day of each month, prepare and render a return on a form prescribed by the county. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied.

A return filed with the county finance officer under this section is not a public record as defined by G.S. 132-1 and may not be disclosed except as required by law.

(d) Penalties. A person, firm, corporation, or association who fails or refuses to file the return required by this section shall pay a penalty of ten dollars (\$10.00) for each day's omission. In case of failure or refusal to file the return or pay the tax for a period of 30 days after the time required for filing the return or for paying the tax, there shall be an additional tax, as a penalty, of five percent (5%) of the tax due in addition to any other penalty, with an additional tax of five percent (5%) for each additional month or fraction thereof until the tax is paid.

Any person who willfully attempts in any manner to evade a tax imposed under this section or who willfully fails to pay the tax or make and file a return shall, in addition to all other penalties provided by law, be guilty of a misdemeanor and shall be punishable by a fine not to exceed one thousand dollars (\$1,000), imprisonment not to exceed six months, or both. The board of commissioners may, for good cause shown, compromise or forgive the penalties imposed by this subsection.

(e) Distribution and use of tax revenue. Caldwell County shall, on a quarterly basis, remit the net proceeds of the occupancy tax to the Caldwell County Chamber of Commerce. The chamber of commerce may use up to fifteen percent (15%) of the funds remitted to it under this subsection for administrative expenses related to promoting tourism and industrial growth in the county. The chamber of commerce may spend the remainder of the funds only as follows: fifty percent (50%) to promote travel and tourism in Caldwell County and to sponsor tourist-oriented events and activities in Caldwell County; and fifty percent (50%) to promote industrial and economic

growth in Caldwell County. The chamber of commerce shall report quarterly and at the close of the fiscal year to the board of commissioners on its expenditures of the funds remitted to it under this subsection for the preceding quarter and for the year in such detail as the board may require. As used in this subsection, "net proceeds" means gross proceeds less the cost to the county of administering and collecting the tax, as determined by the finance officer.

(f) Effective date of levy. A tax levied under this section shall become effective on the date specified in the resolution levying the tax. That date must be the first day of a calendar month, however, and may not be earlier than the first day of the second month after the date the resolution is adopted.

(g) Repeal. A tax levied under this section may be repealed by a resolution adopted by the Caldwell County Board of Commissioners. Repeal of a tax levied under this section shall become effective on the first day of a month and may not become effective until the end of the fiscal year in which the repeal resolution was adopted. Repeal of a tax levied under this section does not affect a liability for a tax that was attached before the effective date of the repeal, nor does it affect a right to a refund of a tax that accrued before the effective date of the repeal.

Sec. 2. Any tax enacted pursuant to this act shall not apply to the Caldwell County portion of the Town of Blowing Rock.

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 25th day of June, 1987.

H.B. 192

CHAPTER 473

AN ACT TO ADOPT THE UNIFORM PREMARITAL AGREEMENT ACT.

The General Assembly of North Carolina enacts:

Section 1. The General Statutes are amended by adding the following new Chapter:

"Chapter 52B.

"Uniform Premarital Agreement Act.

"§ 52B-1. *Short title.*--This Chapter may be cited as the 'Uniform Premarital Agreement Act'.

"§ 52B-2. *Definitions.*--As used in this Chapter:

- (1) 'Premarital agreement' means an agreement between prospective spouses made in contemplation of marriage and to be effective upon marriage.
- (2) 'Property' means an interest, present or future, legal or equitable, vested or contingent, in real or personal property, including income and earnings.

" § 52B-3. *Formalities.*--A premarital agreement must be in writing and signed by both parties. It is enforceable without consideration.

" § 52B-4. *Content.*--(a) Parties to a premarital agreement may contract with respect to:

- (1) the rights and obligations of each of the parties in any of the property of either or both of them whenever and wherever acquired or located;
- (2) the right to buy, sell, use, transfer, exchange, abandon, lease, consume, expend, assign, create a security interest in, mortgage, encumber, dispose of, or otherwise manage and control property;
- (3) the disposition of property upon separation, marital dissolution, death, or the occurrence or nonoccurrence of any other event;
- (4) the modification or elimination of spousal support;
- (5) the making of a will, trust, or other arrangement to carry out the provisions of the agreement;
- (6) the ownership rights in and disposition of the death benefit from a life insurance policy;
- (7) the choice of law governing the construction of the agreement; and
- (8) any other matter, including their personal rights and obligations, not in violation of public policy or a statute imposing a criminal penalty.

(b) The right of a child to support may not be adversely affected by a premarital agreement.

" § 52B-5. *Effect of marriage.*--A premarital agreement becomes effective upon marriage.

" § 52B-6. *Amendment, revocation.*--After marriage, a premarital agreement may be amended or revoked only by a written agreement signed by the parties. The amended agreement or the revocation is enforceable without consideration.

" § 52B-7. *Enforcement.*--(a) A premarital agreement is not enforceable if the party against whom enforcement is sought proves that:

- (1) that party did not execute the agreement voluntarily; or

- (2) the agreement was unconscionable when it was executed and, before execution of the agreement, that party:
- (i) was not provided a fair and reasonable disclosure of the property or financial obligations of the other party;
 - (ii) did not voluntarily and expressly waive, in writing, any right to disclosure of the property or financial obligations of the other party beyond the disclosure provided; and
 - (iii) did not have, or reasonably could not have had, an adequate knowledge of the property or financial obligations of the other party.

(b) If a provision of a premarital agreement modifies or eliminates spousal support and that modification or elimination causes one party to the agreement to be eligible for support under a program of public assistance at the time of separation or marital dissolution, a court, notwithstanding the terms of the agreement, may require the other party to provide support to the extent necessary to avoid that eligibility. Before the court orders support under this subsection, the court must find that the party for whom support is ordered is a dependent spouse, as defined by G.S. 50-16.1, and that there are grounds for alimony under G.S. 50-16.2 or alimony pendente lite under G.S. 50-16.3.

(c) An issue of unconscionability of a premarital agreement shall be decided by the court as a matter of law.

"§ 52B-8. *Enforcement: void marriage.*--If a marriage is determined to be void, an agreement that would otherwise have been a premarital agreement is enforceable only to the extent necessary to avoid an inequitable result.

"§ 52B-9. *Limitation of actions.*--Any statute of limitations applicable to an action asserting a claim for relief under a premarital agreement is tolled during the marriage of the parties to the agreement. However, equitable defenses limiting the time for enforcement, including laches and estoppel, are available to either party.

"§ 52B-10. *Application and construction.*--The Uniform Premarital Agreement Act shall be applied and construed to effectuate its general purpose to make uniform among the states enacting it, the law on premarital agreements.

"§ 52B-11. *Severability.*--If any provision of this Chapter or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Chapter which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable."

Sec. 2. The Revisor of Statutes shall cause the Comments to each section to be printed with the section in the General Statutes. The Comments appear in the Premarital Agreement Act published by the National Conference of Commissioners on Uniform State Laws and approved by the American Bar Association, February 13, 1984. The Revisor of Statutes also shall cause the following comment to be printed with G.S. 52B-4: "If the parties contract with respect to the ownership rights in and disposition of the death benefit from a life insurance policy and the provisions of the premarital contract conflict with the provisions of the life insurance policy, the provisions of the life insurance policy shall prevail with respect to payment by the insurance company but not with respect to the rights of the parties to the premarital agreement."

Sec. 3. This act shall become effective July 1, 1987, and shall apply to any premarital agreement executed on or after that date.

In the General Assembly read three times and ratified this the 25th day of June, 1987.

H.B. 430

CHAPTER 474**AN ACT TO APPLY CERTAIN MOTOR VEHICLE LAWS ON
THE STATE PARKS AND FORESTS ROAD SYSTEM.**

The General Assembly of North Carolina enacts:

Section 1. Chapter 143 of the General Statutes is amended by adding a new section to read:

"§ 143-116.8. *Motor vehicle laws applicable to State Parks and forests road system.*--(a) Except as otherwise provided in this section, all the provisions of Chapter 20 of the General Statutes relating to the use of highways and public vehicular areas of the State and the operation of vehicles thereon are made applicable to the State parks and forests road system. For the purposes of this section, the term 'State parks and forests road system' shall mean the streets, alleys, roads, public vehicular areas and driveways of the State parks, State forests, State recreation areas, State lakes, and all other lands administered by the Department of Natural Resources and Community Development. This term shall not be construed, however, to include streets that are a part of the State highway system. Any person violating any of the provisions of Chapter 20 hereby made applicable in the State parks and forests road system shall, upon conviction, be punished in accordance with Chapter 20. Nothing herein contained shall be construed as in any way interfering with the ownership and

control of the State parks and forests road system by the Department of Natural Resources and Community Development.

(b)(1) It shall be unlawful for a person to operate a vehicle in the State parks and forests road system at a speed in excess of twenty-five miles per hour (25 mph). When the Secretary of Natural Resources and Community Development determines that this speed is greater than reasonable and safe under the conditions found to exist in the State parks and forests road system, the Secretary may establish a lower reasonable and safe speed limit. No speed limit established by the Secretary pursuant to this provision shall be effective until posted in the part of the system sought to be affected.

(2) Any person convicted of violating this subsection by operating a vehicle on the State parks and forests road system in excess of twenty-five miles per hour (25 mph) and at least fifteen miles per hour (15 mph) over the legal limit while fleeing or attempting to elude arrest or apprehension by a law enforcement officer with authority to enforce the motor vehicle laws, shall be punished as provided in G.S. 20-141(j).

(3) For the purposes of enforcement and administration of Chapter 20, the speed limits stated and authorized to be adopted by this section are speed limits under Chapter 20.

(4) The Secretary may designate any part of the State parks and forests road system for one-way traffic and shall erect appropriate signs giving notice thereof. It shall be a violation of G.S. 20-165.1 for any person to willfully drive or operate any vehicle on any part of the State parks and forests road system so designated except in the direction indicated.

(5) The Secretary shall have power, equal to the power of local authorities under G.S. 20-158 and G.S. 20-158.1, to place vehicle control signs and signals and yield-right-of-way signs in the State parks and forests road system; the Secretary also shall have power to post such other signs and markers and mark the roads in accordance with Chapter 20 as the Secretary may determine appropriate for highway safety and traffic control. The failure of any vehicle driver to obey any vehicle control sign or signal, or any yield-right-of-way sign placed under the authority of this section in the State parks and forests road system shall be an infraction and shall be punished as provided in G.S. 20-176.

(c) The Secretary of Natural Resources and Community Development may, by rule, regulate parking and establish parking areas, and provide for the removal of illegally parked motor vehicles on the State parks and forests road system. Any rule of the Secretary shall be consistent with the provisions of G.S. 20-161, 20-161.1, and

20-162. Any removal of illegally parked motor vehicles shall be in compliance with Article 7A of Chapter 20.

(d) A violation of the rules issued by the Secretary of Natural Resources and Community Development under subsection (c) of this section is an infraction pursuant to G.S. 20-162.1, and shall be punished as therein provided. These rules may be enforced by the Commissioner of Motor Vehicles, the Highway Patrol, or other law enforcement officers of the State, counties, cities or other municipalities having authority under Chapter 20 to enforce laws or rules on travel or use or operation of vehicles or the use or protection of the highways of the State.

(e) The provisions of Chapter 20 are applicable at all times to the State parks and forests road system, including closing hours, regardless of the fact that during closing hours the State parks and forests road system is not open to the public as a matter of right."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 25th day of June, 1987.

H.B. 456

CHAPTER 475

AN ACT TO ELIMINATE THE AGE RESTRICTIONS FOR APPRENTICE RIVER PILOTS APPOINTED BY THE CAPE FEAR RIVER NAVIGATION AND PILOTAGE COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 76A-12 reads as rewritten:

"§ 76A-12. *Apprentices.*--The Commission when it deems necessary for the best interest of the State is hereby authorized to appoint in its discretion apprentices, ~~none none of whom shall be less than 21 years of age, of whom shall be less than 21 nor more than 30 years of age,~~ and to make and enforce reasonable rules and regulations regulating thereto. Apprentices shall serve for a minimum of one year but not longer than three years in order to be eligible for a limited license. The Commission shall adopt rules and regulations to monitor the progress of apprentices on a regular basis to assure the progressive development of knowledge and skill necessary to obtain a limited license."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 25th day of June, 1987.

AN ACT TO REWRITE THE CHARTER OF THE TOWN OF CARRBORO.

The General Assembly of North Carolina enacts:

Section 1. The Charter of the Town of Carrboro is rewritten to read:

"Article 1. Incorporation, Boundaries, General Powers

Section 1-1. Incorporation and Powers. The Town of Carrboro, heretofore incorporated by the General Assembly, shall continue to operate as a body politic and corporate under the name and style of the 'Town of Carrboro.' Under that name, the town and its officers and employees shall have all of the powers, duties, rights, privileges, and immunities conferred and imposed on cities by the general law of North Carolina and by this charter.

Section 1-2. Corporate Boundaries. The corporate boundaries of the Town of Carrboro shall be those established by Chapter 660 of the Session Laws of 1969 and Chapter 71 of the Session Laws of 1975 as amended by annexations conducted since the effective dates of those acts. An official map of the current town boundaries shall be kept on file in the office of the town clerk.

"Article 2. Organization and Administration

Section 2-1. Governing Body. (a) The governing body of the Town of Carrboro shall consist of a mayor and six aldermen, elected as provided in Section 2-2. The governing body shall be known as the Board of Aldermen.

(b) A majority of the actual membership of the governing body, excluding vacant seats, shall constitute a quorum. Therefore, assuming no vacant seats or one vacant seat, a quorum shall consist of four aldermen or three aldermen plus the mayor.

(c) The mayor shall preside at all meetings of the governing body and shall have the right and responsibility to vote on all issues to the same extent as any other member of the board of aldermen.

(d) An affirmative vote equal to a majority of the members of the governing body not excused from voting on the issue, (i.e., assuming no member is excused, four aldermen or three aldermen plus the mayor) shall be required to adopt an ordinance, take any action having the effect of an ordinance, or make, ratify, or authorize any contract on behalf of the town. In addition, no ordinance nor any action having the effect of any ordinance may be finally adopted on the date on which it is introduced except by an affirmative vote equal to or greater than two thirds of all the actual membership of the governing body (excluding vacant seats) unless the board has first held a public

hearing on the ordinance. Therefore, assuming no vacant seats, unless the governing body first holds a public hearing on an ordinance that ordinance may not be adopted on the date it is introduced except by an affirmative vote of five aldermen or four aldermen plus the mayor. For purposes of this subsection, an ordinance shall be deemed to have been introduced on the date the subject matter is first voted on by the board. This subsection does not modify G.S. 159-17.

Section 2-2. Election of Mayor and Aldermen. (a) The mayor and the aldermen shall be elected by the voters of the entire town. The mayor shall be elected for a term of two years and the aldermen shall be elected for staggered terms of four years.

(b) The municipal elections in the Town of Carrboro shall be nonpartisan and decided by a simple plurality. No primary elections shall be held. The municipal elections shall be conducted pursuant to the applicable provisions of Chapter 163 of the North Carolina General Statutes, particularly Articles 23 and 24 thereof.

(c) In the municipal elections to be held in 1987, and every two years thereafter, the mayor shall be elected for a term of two years. In the 1987 election (and the municipal elections held every four years thereafter), three aldermen shall be elected to fill the seats of the aldermen whose terms expire in 1987 (and every four years thereafter). In the municipal elections to be held in 1989 (and every four years thereafter), three aldermen shall be elected to fill the seats of the aldermen whose terms expire in 1989 (and every four years thereafter).

(d) In the general municipal election the candidate receiving the highest number of votes for mayor shall be elected. The three candidates in such election receiving the highest number of votes for the office of alderman shall be elected for full four-year terms. If it is also necessary to elect one or more aldermen to fill the unexpired terms of one or more aldermen whose offices were vacated, the person receiving the fourth highest number of votes for aldermen (and, if necessary, the fifth and the sixth highest number of votes) shall be elected for the unexpired term or terms.

Section 2-3. Special and Emergency Meetings of Governing Body. (a) For purposes of this section, a 'special meeting' of the board of aldermen means any meeting not held at the board's regular time and place, other than an emergency meeting or a recessed or adjourned session of a regular or special meeting. An 'emergency meeting' means a meeting generally called because of unexpected circumstances that require immediate attention such that it is not possible or practicable or prudent to provide the 48 hours advance notice required for special meetings.

(b) A special or emergency meeting may be called by resolution of the board. The mayor, mayor pro tempore, or any two aldermen may also call a special or emergency meeting by signing a written notice stating the time and place of the meeting. Such notice of a special meeting shall be delivered to the mayor and each alderman or left at his usual dwelling place at least 48 hours before the meeting. Such notice of an emergency meeting shall be delivered to the mayor and each alderman or left at his usual dwelling place as soon as reasonably possible after such meeting is called. The town clerk shall also attempt to notify each member of the governing body by telephone as soon as reasonably possible after an emergency meeting is called.

(c) At a special meeting, the board may consider any subject or take any action that could be considered or taken at a regular meeting, unless some provision of general law specifically requires that a matter be considered or action taken only at a regular meeting. At an emergency meeting, only business connected with the emergency may be considered.

Section 2-4. Manager, Clerk, Attorney Appointed by Board. The board of aldermen shall appoint a manager, clerk, and attorney, all of whom shall serve at the pleasure of the board.

Section 2-5. Council-Manager Form of Government. The Town of Carrboro shall operate under the council-manager form of government.

"Article 3. Finance, Taxation, Contract

Section 3-1. Privilege License Tax. The town may levy privilege license taxes on all trades, occupations, professions, businesses, and franchises carried on within the town unless such trade, occupation, profession, business, or franchise has been completely exempted from municipal privilege license taxes under State law.

Section 3-2. Referendum on Property Tax Levy. As provided in G.S. 160A-209(e), with an approving vote of the people the town may levy property taxes for any purpose for which the town is authorized by this charter or general law to appropriate money. In addition, in calling a referendum on the approval of a property tax levy, the board of aldermen shall not be subject to the limitation set forth in G.S. 160A-209(e) that such a referendum may not be held on the day of any federal, State, district, or county election already validly called at the time the tax referendum is called.

Section 3-3. Execution of Contracts. Properly authorized contracts, deeds, or other instruments shall generally be executed on behalf of the town by the town manager and attested by the town clerk. The

board of aldermen may by ordinance authorize other officials (such as an assistant town manager or deputy clerk) to execute or attest such documents in the absence of the clerk and may, by resolution, authorize other officials (such as the mayor or mayor pro tempore) to execute specific documents.

"Article 4. Town Property

Section 4-1. Sale and Disposition of Property. (a) Notwithstanding the provisions of Articles 12 and 22 of G.S. 160A or any other provision of law, the Town of Carrboro, may in selling property acquired within a redevelopment area or a community development area, reject the highest responsible bid and accept a lessor bid when the board of aldermen finds in a resolution authorizing the sale that:

- (1) The proposed use or development of the land under the bid proposed for acceptance will result in an assessed valuation for ad valorem taxation greater than that of the use or uses proposed by the higher bidders; or
- (2) The proposed use or development of the land under the bid proposed for acceptance will have a substantially greater beneficial effect upon neighboring property, the redevelopment or community development area, or the community as a whole than the use or uses proposed by the higher bidders, or will tend to induce greater investment in the development of other property in the area; or
- (3) The proposed use or development of the land under the bid proposed for acceptance will facilitate the relocation of persons or firms displaced by redevelopment or community development projects to a substantially greater degree than the use or uses proposed by the higher bidders.

(b) Whenever in opening, extending or widening any street, avenue, alley or public place of the town a small parcel or tract of land is cut off or separated by such work from a larger tract of land owned by the town, the board of aldermen may authorize the town manager to execute and deliver in the name of the town a deed conveying the separated parcel or tract of land to an abutting or adjoining property owner or owners in exchange for rights-of-way for the street, avenue, alley or public place or in settlement of any alleged damages sustained by the abutting or adjoining property owner. All deeds and conveyances heretofore or hereafter so executed and delivered shall convey all title and interest the town has in such property notwithstanding no public sale after advertisement was, or is hereafter, made.

Section 4-2. Trespassing on Town Property. The town may, by ordinance, make it a misdemeanor for any person to refuse to vacate any land, building, or facility owned, leased, or otherwise occupied, used or under the possession of the town, when directed to do so by an order of the town manager, any police officer, or the town administrative official or employee in charge of such land.

"Article 5. Special Assessments

Section 5-1. Street Improvements Special Assessments. (a) Under the circumstances specified in subsection (b), the board of aldermen may levy special assessments for street and sidewalk improvements without regard for the petition requirements of G.S. 160A-217. However, except as modified expressly or by necessary implication by this section, all of the other provisions of Article 10 of Chapter 160A (including the preliminary resolution notice and hearing requirements) shall be applicable to assessments made without a petition.

(b) The board of aldermen may exercise the authority granted in subsection (a) with respect to the following types of streets located within the town:

- (1) Unpaved streets that connect two paved streets;
- (2) Unpaved extensions of streets that are partially paved; and
- (3) Unpaved streets where the board receives a petition for the improvements signed by at least a majority in number of the owners of property to be assessed who reside on that street, who must represent at least a majority of all the lineal feet of frontage on the street to be improved that is owned by persons who reside on that street.

(c) Whenever the authority granted in subsection (a) is used, the board of aldermen shall assess to abutting property owners the same percentage of the cost of the project that, by formally adopted town policy, would be assessed if the project were undertaken pursuant to the procedures set forth in G.S. 160A-217.

Section 5-2. Sidewalk Improvements Assessment in Business Areas.

(a) With respect to the streets specified in subsection (b), the board of aldermen may levy special assessments for sidewalk improvements without regard for the petition requirements of G.S. 160A-217. However, except as modified expressly or by necessary implication by this section, all of the other provisions of Article 10 of Chapter 160A (including the preliminary resolution notice and hearing requirements) shall be applicable to assessments made without a petition.

(b) The board of aldermen may exercise the authority granted in subsection (a) with respect to those portions of the following streets that are located within the town's business or industrial zoning

districts: Main Street, Weaver Street, Greensboro Street and Merritt Mill Road.

(c) Whenever the authority granted in subsection (a) is used, the board of aldermen shall assess to abutting property owners the same percentage of the cost of the project that, by formally adopted town policy, would be assessed if the project were undertaken pursuant to the procedures set forth in G.S. 160A-217.

Section 5-3. Assessments for Lateral Utility Connections When Streets Improved. Whenever the town undertakes a street improvement special assessment project, it may in the course of that project install lateral connections from utility lines lying underneath the street to adjacent undeveloped properties and may add the cost of such lateral connections to the assessment otherwise determined for the properties so improved.

"Article 6. Capital Facilities Fees

"Part 1. Impact Fees

Section 6-1. Impact Fees Authorized. (a) The board of aldermen may provide by ordinance for a system of impact fees to be paid by developers to help defray the costs to the town of constructing certain capital improvements, the need for which is created in substantial part by the new development that takes place within the town and its extraterritorial planning area.

(b) For purposes of this part, the term capital improvements includes capital improvements to public streets, bridges, sidewalks, and on and off street surface water drainage ditches, pipes, culverts, and other drainage facilities.

(c) An ordinance adopted under this part may be made applicable to all development that occurs within the town and its extraterritorial planning area, as established by local act or pursuant to the procedures set forth in G.S. 160A-360.

(d) The town may, with the approval of the Orange County Board of Commissioners, construct capital improvements outside the town limits but within the town's extraterritorial planning area and may cooperate with the State in the construction of capital improvements to State highway system streets within this area as well as within the town.

Section 6-2. Amount of Fees. (a) In establishing the amount of any impact fee, the town shall endeavor to approach the objective of having every development contribute to a capital improvements fund an amount of revenue that bears a reasonable relationship to that development's fair share of the costs of the capital improvements that are needed in part because of that development. In fulfilling this

objective the Board of Aldermen shall, among other steps and actions:

- (1) Estimate the total cost of improvements by category (e.g., streets, sidewalks, drainage ways, etc.) that will be needed to provide in a reasonable manner for the public health, safety and welfare of persons residing within the town and its extraterritorial planning area during a reasonable planning period not to exceed 20 years and that, consistent with the objectives set forth herein, ought to be paid for at least in part by impact fees. The Board may divide the town and its extraterritorial area into two or more districts and estimate the costs of needed improvements within each district. These estimates shall be periodically reviewed and updated, and the planning period used may be changed from time to time.
- (2) Establish a percentage of the total costs of each category of improvement that, in keeping with the objective set forth above, should fairly be borne by those paying the impact fee.
- (3) Establish a formula that fairly and objectively apportions the total costs that are to be borne by those paying impact fees among various types of developments. By way of illustration without limitation:
 - a. In the case of street improvements, the impact fee may be related to the number of trips per day generated by different types of uses according to recognized estimates;
 - b. In the case of drainage improvements, the impact fee may be related to the size of a development, the amount of impervious surface the development has, or other factors that bear upon the degree to which a development contributes to the need for drainage improvements made at public expense.

Section 6-3. Capital Improvements Reserve Funds; Expenditures. (a) Impact fees received by the town shall be deposited in a capital improvements reserve fund or funds established under Article 3, Part 2, Chapter 159 of the General Statutes. Such funds may be expended only on the type of capital improvements for which such impact fees were established, and then only in accordance with the provision of subsection (b) of this section.

(b) In order to ensure that impact fees paid by a particular development are expended on capital improvements that benefit that development, the town shall establish for each category of capital improvement for which it collects an impact fee at least two

geographical districts or zones, and impact fees generated by developments within those districts or zones must be spent on improvements that are located within or that benefit property located within those districts or zones.

Section 6-4. Credits for Improvements. An ordinance adopted under this part shall make provision for credits against required fees when a developer installs improvements of a type that generally would be paid for by the town out of a capital reserve account funded by impact fees. The ordinance may spell out the circumstances under which a developer will be allowed to install such improvements and receive such credits.

Section 6-5. Appeals Procedure. An ordinance adopted under this part may provide that any person aggrieved by a decision regarding an impact fee may appeal to the Carrboro Board of Adjustment. If the ordinance establishes an appeals procedure, it shall spell out the time within which the appeal must be taken to the board of adjustment, the possible grounds for an appeal and the board's authority in the matter, whether the fee must be paid prior to resolution of the appeal, and other procedural or substantive matters related to appeals. Any decision by the board of adjustment shall be subject to review by the superior court by proceedings in the nature of *certiorari* in the same manner as is provided in G.S. 160A-388(e).

Section 6-6. Payment of Impact Fees. An ordinance adopted under this Part shall spell out when in the process of development approval and construction impact fees shall be paid and by whom. By way of illustration without limitation, the ordinance may provide that an applicant for a building permit shall submit the impact fee along with the permit application and that building permits shall not be issued until the impact fee has been paid.

Section 6-7. Refunds. If this Part or any ordinance adopted hereunder is declared to be unconstitutional or otherwise invalid, then any impact fees collected shall be refunded to the person paying them together with interest at the rate established under G.S. 105-241.1, being the same rate paid by the Secretary of Revenue on refunds for tax overpayments.

Section 6-8. Limitations on Actions. (a) Any action contesting the validity of an ordinance adopted under this Part must be commenced not later than nine months after the effective date of such ordinance.

(b) Any action seeking to recover an impact fee must be commenced not later than nine months after the impact fee is paid, unless the ordinance establishing the impact fee provides for an appeal

to the board of adjustment as provided in Section 6-5, in which case any shorter appeal period set forth in such ordinance shall control.

"Part 2. Other Fees

Section 6-9. Off-Street Parking Fund. The board of aldermen may establish a fund into which payments from individual firms, persons, corporations, or property owners shall be deposited for the purpose of providing off-street parking facilities, and from which appropriations shall be made exclusively for the purpose of organizing, establishing, developing, or enlarging off-street parking facilities within the town. The board of aldermen may provide in its land use ordinance that all developers must either provide adequate off-street parking (on site or off site) to serve their developments, or pay a fee to the town's off-street parking facilities fund based on the number of required parking spaces not provided.

Section 6-10. Recreation Fees in Lieu of Facilities. The board of aldermen may establish a fund into which payments from developers or property owners may be deposited for the purpose of providing open space areas or recreational facilities and from which appropriations shall be made exclusively for the purpose of acquiring or improving open space areas or recreational facilities that are reasonably expected to benefit or serve the residents of the development generating such funds. The board of aldermen may provide in its land use ordinance that all developers or developers of certain types of projects shall either provide open space and recreational facilities according to standards set forth in the ordinance or pay a fee in accordance with a town-established schedule to the town's open space and recreational facilities fund. The town may also provide in the land use ordinance that, under specified circumstances, such fee shall be required in lieu of the reservation or dedication of open space or recreational facilities.

"Article 7. Eminent Domain

Section 7-1. Purposes for Which Power of Eminent Domain May Be Exercised. The power of eminent domain may be exercised by the town for any purpose authorized by general law or by this charter. Without limiting the foregoing, as applied to the town the phrase 'roads, streets, alleys, and sidewalks' contained in G.S. 40A-3(b)(1) shall be deemed to include bikeways, bikepaths, and other facilities designed for travel by the bicycle-riding public, whether or not combined with streets, sidewalks, paths, or other public ways used for transportation by vehicles or pedestrians.

"Article 8. Regulation of Streets, Sidewalks,
Bikeways, Parking, Etc.

Section 8-1. Regulation of Vehicles Considered Abandoned. In addition to the authorization set forth in G.S. 160A-303(b), the town may, by ordinance, define an abandoned vehicle to include any motor vehicle parked under the circumstances listed below and may enforce such ordinance by towing under any ordinance adopted pursuant to the authorization contained in G.S. 160A-303:

- (1) Any motor vehicle that is left on property owned, leased, or operated by the town contrary to an ordinance prohibiting parking thereon during specified times or in excess of specified durations.
- (2) Any motor vehicle that has been left on private property in a properly designated fire lane in violation of an ordinance prohibiting parking in such specifically designated fire lanes.

Section 8-2. Bikeways. The board of aldermen may adopt ordinances regulating the use of bikeways (thoroughfares suitable for bicycles) within the town, whether such bikeways exist within the rights-of-way of public streets or along separate and independent corridors. Without limiting the foregoing, such ordinances may establish traffic regulations for bicycles travelling in designated bikeways different than those established for other types of vehicular traffic.

Section 8-3. Regulating Railroad Crossing. (a) Whenever the board of aldermen concludes, based upon a record of accidents or near accidents or the opinion of a professional traffic engineer or transportation planner deemed qualified by the board that a particular grade crossing located inside or within 500 yards of the corporate boundaries of the town is especially hazardous, the board may adopt an ordinance requiring the railroad company to install and maintain such warning signs, gates, lights or devices as the board deems reasonably necessary in the interest of public safety. The ordinance may provide that up to seventy-five percent (75%) of the cost of the acquisition and installation (or replacement) of such devices as well as one hundred percent (100%) of the maintenance cost shall be borne by the railroad, and the remaining cost shall be borne by the town.

(b) The intent of the section is to modify the provisions of G.S. 160A-298 as they would otherwise apply to the Town of Carrboro.

Section 8-1. Removal of Unauthorized Vehicles from Private Property.

(a) Subject to subsection (b) of this section, any motor vehicle left on private property within the town of Carrboro for more than 24 hours

in an area described in subsection (b)(1) or for any period of time in an area described in subsections (b)(2) and (b)(3) without permission of the person or party having possession (actual or constructive) of such property may be removed by or at the direction of such party to a place of storage, and the registered owner of such motor vehicle shall become liable for removal and storage charges. No person shall be held to answer in any civil or criminal action to any owner, lien holder or other person legally entitled to the possession of any motor vehicle removed under this section except where the person or party against whom liability is asserted acted maliciously in directing the removal of the vehicle or negligently in towing or storing the vehicle.

(b) The provisions of subsection (a) shall apply only to the following areas:

- (1) Private roads, including adjacent shoulders, sidewalks, and medians, so long as at every entrance to such private road or at every entrance to a subdivision or development containing private roads, there is prominently displayed a sign that contains the following message or any equally explicit message, printed in letters at least three inches high: 'Private Road. No Parking In Or Along Road, Violators Towed At Their Expense.' Such sign shall also display a telephone number to be called for information about a towed vehicle.
- (2) Privately owned parking lots or areas, regardless of whether such lots or areas fall within the definition of 'public vehicular areas' contained in G.S. 20-4.01(32), so long as there is prominently displayed at every entrance to such lots or areas a sign that clearly informs, in letters at least three inches in height, any person driving a motor vehicle onto such lot or areas:
 - a. Either that (i) parking within such lot is restricted in a manner indicated in such entrance sign, or (ii) parking within such lot is restricted in a manner indicated in signs placed throughout the lot, (and such signs are placed in such a manner and location as reasonably to inform persons seeking to park in specific spaces what limitations apply to such spaces); and
 - b. That violators may be towed at their expense; and
 - c. What the telephone number is that should be called for information about a towed vehicle. (This information may be in letters or numbers less than three inches in height.)

- (3) Any driveway or parking space that is manifestly designed to serve a single family or two-family private residence, as well as any other private property that is manifestly not designed or intended for the parking of motor vehicles.

(c) A property owner or possessor who removes a vehicle or has a vehicle removed pursuant to this section shall immediately thereafter contact the Town of Carrboro police department and inform such agency that the vehicle has been removed, who removed it, why it was removed, and where it can be reclaimed, and shall provide such agency with the registration plate number or other identification of such vehicle.

"Article 9. Regulation of Buildings and Development

"Part 1. General

Section 9-1. Extraterritorial Authority. (a) The town is authorized to exercise all of the powers granted in Article 19 of Chapter 160A of the General Statutes (Planning and Regulation of Development) as well as related powers conferred in this charter not only within the corporate limits of the town but also within the town's extraterritorial planning area, which consists of the area described in Chapters 122 and 636 of the Session Laws of 1963 as the same may be amended from time to time by any other local act or any ordinance adopted pursuant to G.S. 160A-360.

(b) The division line between the extraterritorial jurisdiction of the Town of Carrboro and the Town of Chapel Hill may by mutual written agreement of the towns be relocated from time to time.

Section 9-2. Unified Development Ordinance. The board of aldermen may combine into a single ordinance or unified land use code any of the ordinances that it is permitted to adopt pursuant to the authority granted in Article 19 of Chapter 160A of the General Statutes or any local act applicable to the Town of Carrboro that deals with the subject matters contained in Article 19 of Chapter 160A of the General Statutes. In a unified development ordinance the board may provide that subdivision preliminary plat approval be granted in the same manner as any other conditional use permit is issued, including the attachment of reasonable conditions to such approval.

Section 9-3. Zoning Board of Adjustment. The board of aldermen may create a board of adjustment in accordance with the provisions of Article 19 of Chapter 160A of the General Statutes. Such board shall be subject to all the provisions of general law except that the board of aldermen may authorize the board of adjustment to decide any matter before it either (i) upon a vote of a majority of the members present at a meeting and not excused from voting, so long as a quorum

consisting of at least six members is present, or (ii) upon a vote of a four-fifths majority of the members present at a meeting and not excused from voting, so long as a quorum consisting of at least six members is present.

Section 9-4. Smoke Detectors. Notwithstanding any provision of the North Carolina State Building Code or any general or local law to the contrary, the board of aldermen may adopt an ordinance requiring that the owners of all existing rental residential dwelling units whose units are not required to have smoke detectors under the State Building Code shall install battery operated smoke detectors in such units within 90 days after the effective date of such ordinance.

Section 9-5. Sprinkler Systems. Notwithstanding any provision of the North Carolina State Building Code or any general or local law to the contrary, the board of aldermen may adopt an ordinance requiring that sprinkler systems be installed in all of the following types of buildings constructed within the town or its extraterritorial planning jurisdiction: (i) buildings in excess of 50 feet in height; (ii) nonresidential buildings containing at least 5,000 square feet of floor surface area; or (iii) buildings designed for assembly occupancy (as defined in the North Carolina State Building Code) that accommodate more than 25 people. This ordinance applies to existing buildings only to the extent and under the circumstances that the provisions of the North Carolina State Building Code apply to preexisting buildings.

"Part 2. Neighborhood Preservation Districts

Section 9-11. Membership and Appointment of Commission. (a) The town may create a special commission, to be known as the neighborhood preservation district commission. The commission shall consist of not less than three members, to be appointed by the board of aldermen for such terms, not to exceed four years, as the board of aldermen may by ordinance provide. All members shall be residents of the town or the town's extraterritorial planning jurisdiction at the time of appointment. Where possible, appointments shall be made in such a manner as to maintain on the commission at all times at least two members who have had special training or experience in a design field, such as architecture, landscape design, landscape architecture, horticulture, city planning, or a related field. Membership on the commission is declared to be an office that may be held concurrently with any other elective or appointive office pursuant to Article VI, Section 9 of the North Carolina Constitution.

(b) In lieu of establishing a separate neighborhood preservation district commission, the town may designate as its neighborhood preservation district commission either (i) an historic district

commission, established pursuant to G.S. 160A-396, or (ii) the planning board, or (iii) the appearance commission.

Section 9-12. Neighborhood Preservation District Defined. A neighborhood preservation district is an area that possesses form, character, and visual qualities derived from arrangements or combinations of architecture or appurtenant features or places of historical or cultural significance that create an image of stability, local identity, and livable atmosphere.

Section 9-13. Powers and Duties of Commission. The board of aldermen may confer upon the neighborhood preservation district commission any or all of the following duties and powers:

- (1) To undertake an inventory of areas of cultural or historical significance within the jurisdiction of the town to identify for all public officials and public bodies those characteristics which define significant areas within the jurisdiction;
- (2) To recommend to the board of aldermen areas to be designated or removed from designation by ordinance as "Neighborhood Preservation Districts";
- (3) To conduct an educational program with respect to the special character of neighborhood preservation districts;
- (4) To prepare or review studies and plans for consideration by governing bodies in taking action that affects the preservation and enhancement of such districts;
- (5) To recommend to the board of aldermen such action as will enhance and preserve the special character of neighborhood preservation districts;
- (6) To cooperate with public and private officials, organizations, agencies, and groups which are concerned with and have an impact upon neighborhood preservation districts;
- (7) To submit annually to the board of aldermen a written report of its activities and to identify activities, including violations of ordinances and plans, that affect the district. All accounts and funds of the commission shall be administered in accordance with the requirements of the Local Government Budget and Fiscal Control Act;
- (8) To review all applications for (i) zoning, sign, special use and conditional use permits for development within the district, as well as (ii) all building permit applications for any work involving the construction, removal, or alteration of an 'exterior feature' (as the term is defined in G.S. 160A-397) of a building within a district under circumstances where no zoning, sign, conditional, or special use permit is required for such work. The board of

aldermen may provide that none of the foregoing permits may be issued until the neighborhood preservation commission has had an opportunity to comment upon the application and for its comments to be officially taken into consideration by the permit issuing authority.

- (9) In the case of an application for any of the permits referenced in subsection (8) which authorize work involving the construction, reconstruction, alteration, removal, restoration, or demolition of any 'exterior feature' of any building within a district, the board of aldermen may authorize the commission to delay the issuance of the permit for a period not exceeding 180 days from the application date to provide an opportunity for the commission to negotiate with the applicant and any other parties in an effort to find a means of making the proposed work more consistent with the preservation of the district.

Section 9-14. Procedures. (a) As a guide for the identification and evaluation of neighborhood preservation districts, the commission may undertake an inventory of those areas within its jurisdiction that exhibit scenic, cultural, historical and natural qualities and which may qualify as neighborhood preservation districts as defined in Section 9-12. No ordinance designating a neighborhood preservation district shall be adopted by the board of aldermen until the following procedural steps have been taken:

- (1) The commission investigates and prepares a report on the special historical or cultural qualities of the area to be designated.
- (2) The commission and the board of aldermen hold a public hearing on the proposed ordinance(s) designating neighborhood preservation districts. Reasonable notice of the time and place thereof shall be given.
- (b) Following the joint public hearing, the board of aldermen may adopt the ordinance as proposed, adopt the ordinance with any amendments it deems necessary, or reject the proposed ordinance.
- (c) Following adoption of the ordinance, the designation of the neighborhood preservation district shall be publicized through appropriate publications and public awareness programs.

"Article 10. Miscellaneous Regulations

Section 10-1. Housing Discrimination. The board of aldermen may adopt ordinances designed to ensure that all housing opportunities in the Town of Carrboro shall be equally available to all persons without

regard to race, color, religion, sex or national origin. Such ordinances may regulate or prohibit any act, practice, activity or procedure related directly or indirectly to the sale or rental of public or private housing that affects or may tend to affect the availability or desirability of housing on an equal basis to all persons, without regard to race, color, religion, sex or national origin. However, ordinances adopted pursuant to the authority contained in this act shall not apply to the rental of rooms or units in dwellings containing living quarters occupied or intended to be occupied by no more than four families living independently of each other, if the owner actually maintains and occupies one of such living quarters as his residence. Any ordinance passed pursuant to this authorization may be enforced by any method authorized for enforcement of ordinances generally in G.S. 160A-175. In addition, any ordinance adopted pursuant to this authorization may provide that any person aggrieved by any act, practice, activity or procedure prohibited by such ordinance may seek equitable relief in the appropriate division of the General Court of Justice."

Sec. 2. The following local acts, to the extent such acts are applicable to the Town of Carrboro, as well as all other local acts applicable to the town that are inconsistent with this act, are repealed.

Chapter 122 Session Laws of 1963 (except Section 8 thereof, which sets forth the boundaries of the town's extraterritorial planning jurisdiction.)

Chapter 660 Session Laws of 1969 (except that the description of the town boundaries contained therein shall not be affected.)

Chapter 1088 Session Laws of 1969

Chapter 625 Session Laws of 1971

Chapter 260 Session Laws of 1977

Chapter 365 Session Laws of 1979

Chapter 753 Session Laws of 1979

Chapter 301 Session Laws of 1979

Chapter 1139 Session Laws of 1979 (2d Session 1980)

Chapter 302 Session Laws of 1979

Chapter 911 Session Laws of 1981, Sections 1,2,3,4,5,10

Chapter 730 Session Laws of 1983 (except Section 4)

Chapter 357 Session Laws of 1985, Sections 1,2,3,6

Chapter 936 Session Laws (Regular Session, 1986), Section 3

Sec. 3. The following local acts or portions thereof applicable to the Town of Carrboro are not repealed:

Section 8 of Chapter 122 of the Session Laws of 1963 (which describes in part the town's extraterritorial planning jurisdiction)
Chapter 636 of the Session Laws of 1963 (which describes in part the town's extraterritorial planning jurisdiction)

The description of the town boundaries set forth in Chapter 660 of the Session Laws of 1969

Chapter 71 of the Session Laws of 1975 (a satellite annexation of The Villages Apartments complex)

Section 4 of Chapter 730 of the Session Laws of 1983 (validating prior special assessments)

Sec. 4. No provision of this act is intended, nor shall be construed, to affect in any way any rights or interests (whether public or private):

(1) Now vested or accrued, in whole or in part, the validity of which might be sustained or preserved by reference to any provisions of law repealed by this act.

(2) Derived from, or which might be sustained or preserved in reliance upon, action heretofore taken pursuant to or within the scope of any provisions of law repealed by this act.

Sec. 5. No law heretofore repealed expressly or by implication, and no law granting authority which has been exhausted, shall be revived by:

(1) The repeal herein of any act repealing such law, or

(2) Any provision of this act which disclaims an intention to repeal or affect enumerated or designated laws.

Sec. 6. All existing ordinances and resolution of the Town of Carrboro and all existing rules or regulations of departments or agencies of the Town of Carrboro not inconsistent with the provisions of this act shall continue in full force and effect until repealed, modified or amended.

Sec. 7. No action or proceeding of any nature (whether civil or criminal, judicial or administrative, or otherwise) pending at the effective date of this act by or against the Town of Carrboro or any of its departments or agencies shall be abated or otherwise affected by the adoption of this act.

Sec. 8. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

Sec. 9. Whenever a reference is made in this act to a particular provision of the General Statutes, and such provision is later amended, repealed, superseded or recodified, the reference shall be deemed amended to refer to the amended General Statute, or to the General

Statute which most clearly corresponds to the statutory provision which is repealed, superseded or recodified.

Sec. 10. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 25th day of June, 1987.

H.B. 790

CHAPTER 477

AN ACT TO AMEND THE LAW PERTAINING TO THE PUBLIC SCHOOL CALENDAR.

The General Assembly of North Carolina enacts:

Section 1. G.S. 115C-84(c) is rewritten to read:

"(c) There shall be operated in every school in the State a uniform school term of 180 days for instructing pupils. The school calendar for each local school administrative unit shall include days that can be used to make up any of the 180 days of the school term on which school is closed due to hazardous weather conditions, natural disaster, or other emergency; the required number of such days for a local school administrative unit shall be the greater of (i) five days or (ii) the average number of days missed in five of the last six school years in which the least number of days were missed. If a local school administrative unit has made up at least the required number of such days and if the local school board finds that it is impracticable to make up additional days, the local school board may excuse students from attendance for three such days; on the days excused for students, the local board may require teachers to report for a workday or it may excuse teachers from attendance on such days. The days excused for teachers under this paragraph do not have to be made up by teachers and do not affect teachers' pay. Local boards of education shall report all days excused for students, whether the days were excused for teachers, and the reason they were excused to the State Board of Education. This report shall include total days missed and the reason therefor, by date, and the total number of days made up, as justification for the local board's action in the matter.

After the required number of days have been made up within the school calendar and after the local board has exercised its authority to suspend days as set forth in the preceding paragraph, the State Board of Education, at the request of the local board of education, may suspend school additional days in any local school administrative unit where it finds that conditions justify such suspension of school. The days excused under this paragraph do not have to be made up by

teachers or students and the first 15 such days do not affect teachers' pay.

During any period of emergency, in any section of the State where the said emergency conditions make it necessary, the State Board of Education may order general, and if necessary, extended recesses or adjournment of the public schools."

Sec. 2. This act shall become effective July 1, 1988.

In the General Assembly read three times and ratified this the 25th day of June, 1987.

H.B. 1064

CHAPTER 478

AN ACT TO PROVIDE FOR EARLY TERMINATION OF RESIDENTIAL RENTAL AGREEMENTS BY MILITARY PERSONNEL IN CERTAIN CIRCUMSTANCES.

The General Assembly of North Carolina enacts:

Section 1. Article 5 of Chapter 42 of the General Statutes is amended by adding a new section to read:

"§ 42-45. *Early termination of rental agreement by military personnel.*--(a) Any member of the United States Armed Forces who (i) is required to move pursuant to permanent change of station orders to depart 50 miles or more from the location of the dwelling unit, or (ii) is prematurely or involuntarily discharged or released from active duty with the United States Armed Forces, may terminate his rental agreement for a dwelling unit by providing the landlord with a written notice of termination to be effective on a date stated in the notice that is at least 30 days after the landlord's receipt of the notice. The notice to the landlord must be accompanied by either a copy of the official military orders or a written verification signed by the member's commanding officer.

Upon termination of a rental agreement under this section, the tenant is liable for the rent due under the rental agreement prorated to the effective date of the termination payable at such time as would have otherwise been required by the terms of the rental agreement. The tenant is not liable for any other rent or damages due to the early termination of the tenancy except the liquidated damages provided in subsection (b) of this section. If a member terminates the rental agreement pursuant to this section 14 or more days prior to occupancy, no damages or penalties of any kind shall be due.

(b) In consideration of early termination of the rental agreement, the tenant is liable to the landlord for liquidated damages provided the tenant has completed less than nine months of the tenancy and the landlord has suffered actual damages due to loss of the tenancy. The liquidated damages shall be in an amount no greater than one month's rent if the tenant has completed less than six months of the tenancy as of the effective date of termination, or one-half of one month's rent if the tenant has completed at least six but less than nine months of the tenancy as of the effective date of termination.

(c) The provisions of this section may not be waived or modified by the agreement of the parties under any circumstances. Nothing in this section shall affect the rights established by G.S. 42-3."

Sec. 2. This act shall become effective October 1, 1987, and applies to rental agreements executed or renewed on or after that date.

In the General Assembly read three times and ratified this the 25th day of June, 1987.

H.B. 1182

CHAPTER 479

AN ACT TO AMEND VARIOUS PROBATION LAWS BY
EXTENDING THE AVAILABILITY OF INTENSIVE
PROBATION TO MISDEMEANANTS AND ALLOWING
FAILURE TO PERFORM COMMUNITY SERVICE WORK TO
BE PUNISHED AS CIVIL CONTEMPT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143B-262(c) reads as rewritten:

"(c) The Department shall establish within the Division of Adult Probation and Parole a program of Intensive Probation. This program shall provide intensive supervision for probationers who require close supervision in order to remain in the community pursuant to a community penalties plan, community work plan, community restitution plan, or other plan of rehabilitation. At least eighty percent (80%) of each intensive probation team's caseload shall be persons who have been convicted of a felony."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 25th day of June, 1987.

S.B. 115

CHAPTER 480

AN ACT TO MAKE ENGLISH THE OFFICIAL LANGUAGE OF NORTH CAROLINA.

The General Assembly of North Carolina enacts:

Section 1. Chapter 145 of the General Statutes is amended by adding a new section to read:

"§ 145-11. *State language.*--(a) Purpose. English is the common language of the people of the United States of America and the State of North Carolina. This section is intended to preserve, protect and strengthen the English language, and not to supersede any of the rights guaranteed to the people by the Constitution of the United States or the Constitution of North Carolina.

(b) English as the Official Language of North Carolina. English is the official language of the State of North Carolina."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 25th day of June, 1987.

S.B. 202

CHAPTER 481

AN ACT AUTHORIZING THE SENIOR RESIDENT SUPERIOR COURT JUDGE TO REQUIRE JUDICIAL OFFICIALS TO STATE THE REASONS FOR REQUIRING A SECURED BAIL BOND AS A CONDITION OF PRETRIAL RELEASE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 15A-534(b) is amended by changing the period at the end of the last sentence to a comma and adding the following:

"and must record the reasons for so doing in writing to the extent provided in the policies or requirements issued by the senior resident superior court judge pursuant to G.S. 15A-535(a)."

Sec. 2. G.S. 15A-535(a) is amended by changing the period at the end to a comma and adding the following:

"and may include in such policies, or issue separately, a requirement that each judicial official who imposes condition (4) in G.S. 15A-534(a) must record the reasons for doing so in writing."

Sec. 3. This act shall become effective October 1, 1987.

In the General Assembly read three times and ratified this the 25th day of June, 1987.

S.B. 265

CHAPTER 482

AN ACT TO MAKE G.S. 130A-24(a) CONSISTENT WITH G.S. CHAPTER 150B, THE ADMINISTRATIVE PROCEDURE ACT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 130A-24(a) is amended by changing "150A" to "150B" and by changing the comma after "Act" to a period and by deleting the remainder of the subsection.

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 25th day of June, 1987.

S.B. 94

CHAPTER 483

AN ACT TO RECODIFY THE LAWS RELATING TO FRATERNAL BENEFIT SOCIETIES AND FRATERNAL ORDERS.

The General Assembly of North Carolina enacts:

Section 1. Subchapter VII of Chapter 58, consisting of Articles 28, 29 and 30, of the General Statutes is repealed.

Sec. 2. Chapter 58 of the General Statutes is amended by enacting a new Subchapter VIIA containing new Articles 31A and 31B to read:

"SUBCHAPTER VIIA
FRATERNAL BENEFIT SOCIETIES
AND FRATERNAL ORDERS
ARTICLE 31A

FRATERNAL BENEFIT SOCIETIES

" § 58-340.1. *Fraternal Benefit Societies.*--Any incorporated society, order or supreme lodge, without capital stock, including one exempted under the provisions of G.S. 58-340.38(a)(2) whether incorporated or not, conducted solely for the benefit of its members and their beneficiaries and not for profit, operated on a lodge system with ritualistic form of work, having a representative form of government, and which provides benefits in accordance with this Article, is hereby declared to be a fraternal benefit society.

" § 58-340.2. *Lodge System.*--(a) A society is operating on the lodge system if it has a supreme governing body and subordinate lodges into which members are elected, initiated or admitted in accordance with its laws, rules and ritual. Subordinate lodges shall be

required by the laws of the society to hold regular meetings periodically in furtherance of the purposes of the society.

(b) A society may, at its option, organize and operate lodges for children under the minimum age for adult membership. Membership and initiation in local lodges shall not be required of such children, nor shall they have a voice or vote in the management of the society.

" § 58-340.3. *Representative Form of Government.*--A society has a representative form of government when:

(a) it has a supreme governing body constituted in one of the following ways:

(1) *Assembly.* The supreme governing body is an assembly composed of delegates elected directly by the members or at intermediate assemblies or conventions of members or their representatives, together with other delegates as may be prescribed in the society's laws. A society may provide for election of delegates by mail. The elected delegates shall constitute a majority in number and shall not have less than a majority of the votes and not less than the number of votes required to amend the society's laws. The assembly shall be elected and shall meet at least once every four years and shall elect a board of directors to conduct the business of the society between meetings of the assembly. Vacancies on the board of directors between elections may be filled in the manner prescribed by the society's laws.

(2) *Direct Election.* The supreme governing body is a board composed of persons elected by the members, either directly or by their representatives in intermediate assemblies, and any other persons prescribed in the society's laws. A society may provide for election of the board by mail. Each term of a board member may not exceed four years. Vacancies on the board between elections may be filled in the manner prescribed by the society's laws. Those persons elected to the board shall constitute a majority in number and not less than the number of votes required to amend the society's laws. A person filling the unexpired term of an elected board member shall be considered to be an elected member. The board shall meet at least quarterly to conduct the business of the society.

(b) the officers of the society are elected either by the supreme governing body or by the board of directors;

(c) only benefit members are eligible for election to the supreme governing body, the board of directors or any intermediate assembly; and

(d) each voting member shall have one vote; no vote may be cast by proxy.

" § 58-340.4. *Terms Used.*--Whenever used in this Article:

(a) 'benefit contract' shall mean the agreement for provision of benefits authorized by G.S. 58-340.16, as that agreement is described in G.S. 58-340.19(a).

(b) 'benefit member' shall mean an adult member who is designated by the laws or rules of the society to be a benefit member under a benefit contract.

(c) 'certificate' shall mean the document issued as written evidence of the benefit contract.

(d) 'premiums' shall mean premiums, rates, dues or other required contributions by whatever name known, which are payable under the certificate.

(e) 'laws' shall mean the society's articles of incorporation, constitution and bylaws, however designated.

(f) 'rules' shall mean all rules, regulations or resolutions adopted by the supreme governing body or board of directors which are intended to have general application to the members of the society.

(g) 'society' shall mean fraternal benefit society, unless otherwise indicated.

(h) 'lodge' shall mean subordinate member units of the society, known as camps, courts, councils, branches or by any other designation.

" § 58-340.5. *Purposes and Powers.*--(a) A society shall operate for the benefit of members and their beneficiaries by:

- (1) providing benefits as specified in G.S. 58-340.16; and
- (2) operating for one or more social, intellectual, educational, charitable, benevolent, moral, fraternal, patriotic or religious purposes for the benefit of its members, which may also be extended to others.

Such purposes may be carried out directly by the society, or indirectly through subsidiary corporations or affiliated organizations.

(b) Every society shall have the power to adopt laws and rules for the government of the society, the admission of its members, and the management of its affairs. It shall have the power to change, alter, add to or amend such laws and rules and shall have such other powers as are necessary and incidental to carrying into effect the objects and

purposes of the society.

"§ 58-340.6. *Qualifications for Membership.*--(a) A society shall specify in its laws or rules:

- (1) eligibility standards for each and every class of membership, provided that if benefits are provided on the lives of children, the minimum age for adult membership shall be set at not less than age 15 and not greater than age 21;
- (2) the process for admission to membership for each membership class; and
- (3) the rights and privileges of each membership class, provided that only benefit members shall have the right to vote on the management of the insurance affairs of the society.

(b) A society may also admit social members who shall have no voice or vote in the management of the insurance affairs of the society.

(c) Membership rights in the society are personal to the member and are not assignable.

"§ 58-340.7. *Location of Office, Meetings, Communications to Members, Grievance Procedures.*--(a) The principal office of any domestic society shall be located in this State. The meetings of its supreme governing body may be held in any state, district, province or territory wherein such society has at least one subordinate lodge, or in such other location as determined by the supreme governing body, and all business transacted at such meetings shall be as valid in all respects as if such meetings were held in this State. The minutes of the proceedings of the supreme governing body and of the board of directors shall be in the English language.

(b) A society may provide in its laws for an official publication in which any notice, report, or statement required by law to be given to members, including notice of election, may be published. Such required reports, notices and statements shall be printed conspicuously in the publication. If the records of a society show that two or more members have the same mailing address, an official publication mailed to one member is deemed to be mailed to all members at the same address unless a member requests a separate copy.

(c) Not later than June 1 of each year, a synopsis of the society's annual statement providing an explanation of the facts concerning the condition of the society thereby disclosed shall be printed and mailed to each benefit member of the society or, in lieu thereof, such synopsis may be published in the society's official publication.

(d) A society may provide in its laws or rules for grievance or complaint procedures for members.

" § 58-340.8. *No Personal Liability.*--(a) The officers and members of the supreme governing body or any subordinate body of a society shall not be personally liable for any benefits provided by a society.

(b) Any person may be indemnified and reimbursed by any society for expenses reasonably incurred by, and liabilities imposed upon, such person in connection with or arising out of any action, suit or proceeding, whether civil, criminal, administrative or investigative, or threat thereof, in which the person may be involved by reason of the fact that he or she is or was a director, officer, employee or agent of the society or of any firm, corporation or organization which he or she served in any capacity at the request of the society. A person shall not be so indemnified or reimbursed (1) in relation to any matter in such action, suit or proceeding as to which he or she shall finally be adjudged to be or have been guilty of breach of a duty as a director, officer, employee or agent of the society or (2) in relation to any matter in such action, suit or proceeding, or threat thereof, which has been made the subject of a compromise settlement; unless in either such case the person acted in good faith for a purpose the person reasonably believed to be in or not opposed to the best interests of the society and, in a criminal action or proceeding, in addition, had no reasonable cause to believe that his or her conduct was unlawful. The determination whether the conduct of such person met the standard required in order to justify indemnification and reimbursement in relation to any matter described in subpoints (1) or (2) of the preceding sentence may only be made by the supreme governing body or board of directors by a majority vote of a quorum consisting of persons who were not parties to such action, suit or proceeding or by a court of competent jurisdiction. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of no contest, as to such person shall not in itself create a conclusive presumption that the person did not meet the standard of conduct required in order to justify indemnification and reimbursement. The foregoing right of indemnification and reimbursement shall not be exclusive of other rights to which such person may be entitled as a matter of law and shall inure to the benefit of his or her heirs, executors and administrators.

(c) A society shall have power to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the society, or who is or was serving at the request of the society as a director, officer, employee or agent of any other firm, corporation, or organization against any liability asserted against such person and incurred by him or her in any such capacity or arising out of his or her status as such, whether or not the society would have the power to indemnify the person against such liability under this section.

" § 58-340.9. *Waiver.*--The laws of the society may provide that no subordinate body, nor any of its subordinate officers or members shall have the power or authority to waive any of the provisions of the laws of the society. Such provision shall be binding on the society and every member and beneficiary of a member.

" § 58-340.10. *Organization.*--A domestic society organized on or after the effective date of this Article shall be formed as follows:

(a) 10 or more citizens of the United States, a majority of whom are citizens of this State, who desire to form a fraternal benefit society, may make, sign and acknowledge before some officer competent to take acknowledgement of deeds, articles of incorporation, in which shall be stated:

- (1) the proposed corporate name of the society, which shall not so closely resemble the name of any society or insurance company as to be misleading or confusing;
- (2) the purposes for which it is being formed and the mode in which its corporate powers are to be exercised. Such purposes shall not include more liberal powers than are granted by this Article;
- (3) the names and residences of the incorporators and the names, residences and official titles of all the officers, trustees, directors, or other persons who are to have and exercise the general control of the management of the affairs and funds of the society for the first year or until the ensuing election at which all such officers shall be elected by the supreme governing body, which election shall be held not later than one year from the date of issuance of the permanent certificate of authority.

(b) Such articles of incorporation, duly certified copies of the society's bylaws and rules, copies of all proposed forms of certificates, applications therefor, and circulars to be issued by the society and a bond conditioned upon the return to applicants of the advanced payments if the organization is not completed within one year shall be

filed with the Commissioner of Insurance, who may require such further information as the Commissioner deems necessary. The bond with sureties approved by the Commissioner of Insurance shall be in such amount, not less than three hundred thousand dollars (\$300,000) nor more than one million five hundred thousand dollars (\$1,500,000), as required by the Commissioner of Insurance. All documents filed are to be in the English language. If the purposes of the society conform to the requirements of this chapter and all provisions of the law have been complied with, the Commissioner of Insurance shall so certify, retain and file the articles of incorporation and furnish the incorporators a preliminary certificate of authority authorizing the society to solicit members as hereinafter provided.

(c) No preliminary certificate of authority granted under the provisions of this section shall be valid after one year from its date or after such further period, not exceeding one year, as may be authorized by the Commissioner of Insurance upon cause shown, unless the 500 applicants hereinafter required have been secured and the organization has been completed as herein provided. The articles of incorporation and all other proceedings thereunder shall become null and void in one year from the date of the preliminary certificate of authority, or at the expiration of the extended period, unless the society shall have completed its organization and received a certificate of authority to do business as hereinafter provided.

(d) Upon receipt of a preliminary certificate of authority from the Commissioner of Insurance, the society may solicit members for the purpose of completing its organization, shall collect from each applicant the amount of not less than one regular monthly premium in accordance with its table of rates, and shall issue to each such applicant a receipt for the amount so collected. No society shall incur any liability other than for the return of such advance premium, nor issue any certificate, nor pay, allow, or offer or promise to pay or allow, any benefit to any person until:

- (1) actual bona fide applications for benefits have been secured on not less than 500 applicants, and any necessary evidence of insurability has been furnished to and approved by the society;
- (2) at least 10 subordinate lodges have been established into which the 500 applicants have been admitted;
- (3) there has been submitted to the Commissioner of Insurance, under oath of the president or secretary, or corresponding officer of the society, a list of such applicants, giving their names, addresses, date each was admitted, name and number of the subordinate lodge of which each applicant is a member, amount of benefits to be

- granted and premiums therefor; and
- (4) it shall have been shown to the Commissioner of Insurance, by sworn statement of the treasurer, or corresponding officer of such society, that at least 500 applicants have each paid in cash at least one regular monthly premium as herein provided, which premiums in the aggregate shall amount to at least one hundred and fifty thousand dollars (\$150,000). Said advance premiums shall be held in trust during the period of organization and if the society has not qualified for a certificate of authority within one year, as herein provided, such premiums shall be returned to said applicants.

(e) The Commissioner of Insurance may make such examination and require such further information as the Commissioner deems advisable. Upon presentation of satisfactory evidence that the society has complied with all the provisions of law, the Commissioner shall issue to the society a certificate of authority to that effect and that the society is authorized to transact business pursuant to the provisions of this article. The certificate of authority shall be prima facie evidence of the existence of the society at the date of such certificate. The Commissioner of Insurance shall cause a record of such certificate of authority to be made. A certified copy of such record may be given in evidence with like effect as the original certificate of authority.

(f) Any incorporated society authorized to transact business in this State at the time this article becomes effective shall not be required to reincorporate.

" § 58-340.11. *Amendments to Laws.*--(a) A domestic society may amend its laws in accordance with the provisions thereof by action of its supreme governing body at any regular or special meeting thereof or, if its laws so provide, by referendum. Such referendum may be held in accordance with the provisions of its laws by the vote of the voting members of the society, by the vote of delegates or representatives of voting members or by the vote of local lodges. A society may provide for voting by mail. No amendment submitted for adoption by referendum shall be adopted unless, within six months from the date of submission thereof, a majority of the members voting shall have signified their consent to such amendment by one of the methods herein specified.

(b) No amendment to the laws of any domestic society shall take effect unless approved by the Commissioner of Insurance who shall approve such amendment if the Commissioner finds that it has been

duly adopted and is not inconsistent with any requirement of the laws of this State or with the character, objects and purposes of the society. Unless the Commissioner of Insurance shall disapprove any such amendment within 60 days after the filing of same, such amendment shall be considered approved. The approval or disapproval of the Commissioner of Insurance shall be in writing and mailed to the secretary or corresponding officer of the society at its principal office. In case the Commissioner disapproves such amendment, the reasons therefor shall be stated in such written notice.

(c) Within 90 days from the approval thereof by the Commissioner of Insurance, all such amendments, or a synopsis thereof, shall be furnished to all members of the society either by mail or by publication in full in the official publication of the society. The affidavit of any officer of the society or of anyone authorized by it to mail any amendments or synopsis thereof, stating facts which show that same have been duly addressed and mailed, shall be prima facie evidence that such amendments or synopsis thereof, have been furnished the addressee.

(d) Every foreign or alien society authorized to do business in this State shall file with the Commissioner of Insurance a duly certified copy of all amendments of, or additions to, its laws within 90 days after the enactment of same.

(e) Printed copies of the laws as amended, certified by the secretary or corresponding officer of the society shall be prima facie evidence of the legal adoption thereof.

"§ 58-340.12. *Institutions.*--A society may create, maintain and operate, or may establish organizations to operate, not for profit institutions to further the purposes permitted by G.S. 58-340.5(a)(2). Such institutions may furnish services free or at a reasonable charge. Any real or personal property owned, held or leased by the society for this purpose shall be reported in every annual statement.

"§ 58-340.13. *Reinsurance.*--(a) A domestic society may, by a reinsurance agreement, cede any individual risk or risks in whole or in part to an insurer (other than another fraternal benefit society) having the power to make such reinsurance and authorized to do business in this State, or if not so authorized, one which is approved by the Commissioner of Insurance, but no such society may reinsure substantially all of its insurance in force without the written permission of the Commissioner of Insurance. It may take credit for the reserves on such ceded risks to the extent reinsured, but no credit shall be allowed as an admitted asset or as a deduction from liability,

to a ceding society for reinsurance made, ceded, renewed, or otherwise becoming effective after the effective date of this Article, unless the reinsurance is payable by the assuming insurer on the basis of the liability of the ceding society under the contract or contracts reinsured without diminution because of the insolvency of the ceding society.

(b) Notwithstanding the limitation in subsection (a), a society may reinsure the risks of another society in a consolidation or merger approved by the Commissioner of Insurance under G.S. 58-340.14.

" § 58-340.14. *Consolidations and Mergers.*--(a) A domestic society may consolidate or merge with any other society by complying with the provisions of this section. It shall file with the Commissioner of Insurance:

- (1) a certified copy of the written contract containing in full the terms and conditions of the consolidation or merger;
- (2) a sworn statement by the president and secretary or corresponding officers of each society showing the financial condition thereof on a date fixed by the Commissioner of Insurance but not earlier than December 31, next preceding the date of the contract;
- (3) a certificate of such officers, duly verified by their respective oaths, that the consolidation or merger has been approved by a two-thirds vote of the supreme governing body of each society, such vote being conducted at a regular or special meeting of each such body, or, if the society's laws so permit, by mail; and
- (4) evidence that at least 60 days prior to the action of the supreme governing body of each society, the text of the contract has been furnished to all members of each society either by mail or by publication in full in the official publication of each society.

(b) If the Commissioner of Insurance finds that the contract is in conformity with the provisions of this section, that the financial statements are correct and that the consolidation or merger is just and equitable to the members of each society, the Commissioner shall approve the contract and issue a certificate to such effect. Upon such approval, the contract shall be in full force and effect unless any society which is a party to the contract is incorporated under the laws of any other state or territory. In such event the consolidation or merger shall not become effective unless and until it has been approved as provided by the laws of such state or territory and a certificate of such approval filed with the Commissioner of Insurance

of this State or, if the laws of such state or territory contain no such provision, then the consolidation or merger shall not become effective unless and until it has been approved by the Commissioner of Insurance of such state or territory and a certificate of such approval filed with the Commissioner of Insurance of this State. In case such contract is not approved it shall be inoperative, and the fact of the submission and its contents shall not be disclosed by the Commissioner of Insurance.

(c) Upon the consolidation or merger becoming effective as herein provided, all the rights, franchises and interests of the consolidated or merged societies in and to every species of property, real, personal or mixed, and things in action thereunto belonging shall be vested in the society resulting from or remaining after the consolidation or merger without any other instrument, except that conveyances of real property may be evidenced by proper deeds, and the title to any real estate or interest therein, vested under the laws of this State in any of the societies consolidated or merged, shall not revert or be in any way impaired by reason of the consolidation or merger, but shall vest absolutely in the society resulting from or remaining after such consolidation or merger.

(d) The affidavit of any officer of the society or of anyone authorized by it to mail any notice or document, stating that such notice or document has been duly addressed and mailed, shall be prima facie evidence that such notice or document has been furnished the addressees.

(e) All necessary and actual expenses and compensation incident to the proceedings provided in this section shall be paid as provided by such contract of consolidation or merger: Provided, however, that no brokerage or commission shall be included in such expenses and compensation or shall be paid to any person by either of the parties to any such contract in connection with the negotiation therefor or execution thereof, nor shall any compensation be paid to any officer or employee of either of the parties to such contract for directly or indirectly aiding in effecting such contract of consolidation or merger. An itemized statement of all such expenses shall be filed with the Commissioner of Insurance, subject to approval, and when approved the same shall be binding on the parties thereto. Except as fully expressed in the contract of consolidation or merger, or itemized statement of expenses, as approved by the Commissioner of Insurance, or commissioners, as the case may be, no compensation shall be paid to any person or persons, and no officer or employee of the State shall receive any compensation, directly or indirectly, for in any manner

aiding, promoting, or assisting any such consolidation or merger.

" § 58-340.15. *Conversion of Fraternal Benefit Society into Mutual Life Insurance Company.*--Any domestic fraternal benefit society may be converted and licensed as a mutual life insurance company by compliance with all the requirements of the general insurance laws for mutual life insurance companies. A plan of conversion shall be prepared in writing by the board of directors setting forth in full the terms and conditions of conversion. The affirmative vote of two-thirds of all members of the supreme governing body at a regular or special meeting shall be necessary for the approval of such plan. No such conversion shall take effect unless and until approved by the Commissioner of Insurance who may give such approval if the Commissioner finds that the proposed change is in conformity with the requirements of law and not prejudicial to the certificateholders of the society.

" § 58-340.16. *Benefits.*--(a) A society may provide the following contractual benefits in any form:

- (1) death benefits;
- (2) endowment benefits;
- (3) annuity benefits;
- (4) temporary or permanent disability benefits;
- (5) hospital, medical or nursing benefits;
- (6) monument or tombstone benefits to the memory of deceased members; and
- (7) such other benefits as authorized for life insurers and which are not inconsistent with this article.

(b) A society shall specify in its rules those persons who may be issued, or covered by, the contractual benefits in subsection (a), consistent with providing benefits to members and their dependents. A society may provide benefits on the lives of children under the minimum age for adult membership upon application of an adult person.

" § 58-340.17. *Beneficiaries.*--(a) The owner of a benefit contract shall have the right at all times to change the beneficiary or beneficiaries in accordance with the laws or rules of the society unless the owner waives this right by specifically requesting in writing that the beneficiary designation be irrevocable. A society may, through its laws or rules, limit the scope of beneficiary designations and shall provide that no revocable beneficiary shall have or obtain any vested interest in the proceeds of any certificate until the certificate has become due and payable in conformity with the provisions of the benefit contract.

(b) A society may make provision for the payment of funeral benefits to the extent of such portion of any payment under a certificate as might reasonably appear to be due to any person equitably entitled thereto by reason of having incurred expense occasioned by the burial of the member.

(c) If, at the death of any person insured under a benefit contract, there is no lawful beneficiary to whom the proceeds shall be payable, the amount of such benefit, except to the extent that funeral benefits may be paid as hereinbefore provided, shall be payable to the personal representative of the deceased insured, provided that if the owner of the certificate is other than the insured, such proceeds shall be payable to such owner.

" § 58-340.18. *Benefits Not Attachable.*--No money or other benefit, charity, relief or aid to be paid, provided or rendered by any society, shall be liable to attachment, garnishment or other process, or to be seized, taken, appropriated or applied by any legal or equitable process or operation of law to pay any debt or liability of a member or beneficiary, or any other person who may have a right thereunder, either before or after payment by the society.

" § 58-340.19. *The Benefit Contract.*--(a) Every society authorized to do business in this State shall issue to each owner of a benefit contract a certificate specifying the amount of benefits provided thereby. The certificate, together with any riders or endorsements attached thereto, the laws of the society, the application for membership, the application for insurance and declaration of insurability, if any, signed by the applicant, and all amendments to each thereof, shall constitute the benefit contract, as of the date of issuance, between the society and the owner, and the certificate shall so state. A copy of the application for insurance and declaration of insurability, if any, shall be endorsed upon or attached to the certificate. All statements on the application shall be representations and not warranties. Any waiver of this provision shall be void.

(b) Any changes, additions or amendments to the laws of the society duly made or enacted subsequent to the issuance of the certificate, shall bind the owner and the beneficiaries, and shall govern and control the benefit contract in all respects the same as though such changes, additions or amendments had been made prior to and were in force at the time of the application for insurance, except that no change, addition or amendment shall destroy or diminish benefits which the society contracted to give the owner as of the date of issuance.

(c) Any person upon whose life a benefit contract is issued prior to attaining the age of majority shall be bound by the terms of the application and certificate and by all the laws and rules of the society to the same extent as though the age of majority had been attained at the time of application.

(d) A society shall provide in its laws that if its reserves as to all or any class of certificates become impaired its board of directors or corresponding body may require that there shall be paid by the owner to the society the amount of the owner's equitable proportion of such deficiency as ascertained by its board, and that if the payment is not made either (1) it shall stand as an indebtedness against the certificate and draw interest not to exceed the rate specified for certificate loans under the certificates; or (2) in lieu of or in combination with (1), the owner may accept a proportionate reduction in benefits under the certificate. The society may specify the manner of the election and which alternative is to be presumed if no election is made.

(e) Copies of any of the documents mentioned in this section, certified by the secretary or corresponding officer of the society, shall be received in evidence of the terms and conditions thereof.

(f) No certificate shall be delivered or issued for delivery in this State unless a copy of the form has been filed with and approved by the Commissioner of Insurance in the manner provided for like policies issued by life insurers in this State. Every life, accident, health, or disability insurance certificate and every annuity certificate issued on or after one year from the effective date of this Article shall meet the standard contract provision requirements not inconsistent with this Article for like policies issued by life insurers in this State, except that a society may provide for a grace period for payment of premiums of one full month in its certificates. The certificate shall also contain a provision stating the amount of premiums which are payable under the certificate and a provision reciting or setting forth the substance of any sections of the society's laws or rules in force at the time of issuance of the certificate which, if violated, will result in the termination or reduction of benefits payable under the certificate. If the laws of the society provide for expulsion or suspension of a member, the certificate shall also contain a provision that any member so expelled or suspended, except for nonpayment of a premium or within the contestable period for material misrepresentation in the application for membership or insurance, shall have the privilege of maintaining the certificate in force by continuing payment of the required premium.

(g) Benefit contracts issued on the lives of persons below the society's minimum age for adult membership may provide for transfer of control of ownership to the insured at an age specified in the certificate. A society may require approval of an application for membership in order to effect this transfer, and may provide in all other respects for the regulation, government and control of such certificates and all rights, obligations and liabilities incident thereto and connected therewith. Ownership rights prior to such transfer shall be specified in the certificate.

(h) A society may specify the terms and conditions on which benefit contracts may be assigned.

" § 58-340.20. *Nonforfeiture Benefits, Cash Surrender Values, Certificate Loans and Other Options.*--(a) For certificates issued prior to one year after the effective date of this Chapter, the value of every paid-up nonforfeiture benefit and the amount of any cash surrender value, loan or other option granted shall comply with the provisions of law applicable immediately prior to the effective date of this Article.

(b) For certificates issued on or after one year from the effective date of this Article for which reserves are computed on the Commissioner's 1941 Standard Ordinary Mortality Table, the Commissioner's 1941 Standard Industrial Table or the Commissioner's 1958 Standard Ordinary Mortality Table, or the Commissioner's 1980 Standard Mortality Table, or any more recent table made applicable to life insurers, every paid-up nonforfeiture benefit and the amount of any cash surrender value, loan or other option granted shall not be less than the corresponding amount ascertained in accordance with the laws of this State applicable to life insurers issuing policies containing like benefits based upon such tables.

" § 58-340.21. *Investments.*--A society shall invest its funds only in such investments as are authorized by the laws of this State for the investment of assets of life insurers and subject to the limitations thereon. Any foreign or alien society permitted or seeking to do business in this State must comply in substance with the investment requirements and limitations imposed by G.S. 58-79 and applicable to life insurers; provided, that any such society that invests its funds in accordance with the laws of the state, district, territory, country, or province in which it is incorporated, shall thereby be deemed to be in compliance with G.S. 58-79 for a period of two years from the effective date of this section.

" § 58-340.22. *Funds.*--(a) All assets shall be held, invested and disbursed for the use and benefit of the society and no member or beneficiary shall have or acquire individual rights therein or become

entitled to any apportionment on the surrender of any part thereof, except as provided in the benefit contract.

(b) A society may create, maintain, invest, disburse and apply any special fund or funds necessary to carry out any purpose permitted by the laws of such society.

(c) A society may, pursuant to resolution of its supreme governing body, establish and operate one or more separate accounts and issue contracts on a variable basis, subject to the provisions of law regulating life insurers establishing such accounts and issuing such contracts. To the extent the society deems it necessary in order to comply with any applicable federal or State laws, or any rules issued thereunder, the society may adopt special procedures for the conduct of the business and affairs of a separate account, may, for persons having beneficial interests therein, provide special voting and other rights, including without limitation special rights and procedures relating to investment policy, investment advisory services, selection of certified public accountants, and selection of a committee to manage the business and affairs of the account, and may issue contracts on a variable basis to which G.S. 58-340.19(b) and G.S. 58-340.19(d) shall not apply.

"§ 58-340.23. *Exemptions.*--Except as herein provided, societies shall be governed by this Article and shall be exempt from all other provisions of the general insurance laws of this State unless they be expressly designated therein, or unless it is specifically made applicable by this Article.

"§ 58-340.24. *Taxation.*--Every society organized or licensed under this Article is hereby declared to be a charitable and benevolent institution, and all of its funds shall be exempt from all and every State, county, district, municipal and school tax other than taxes on real estate not occupied by such society in carrying on its business.

"§ 58-340.25. *Valuation.*--(a) Standards of valuation for certificates issued prior to one year after the effective date of this Article shall be those provided by the laws applicable immediately prior to the effective date of this Article.

(b) The minimum standards of valuation for certificates issued on or after one year from the effective date of this Article shall be based on the following tables:

- (1) For certificates of life insurance - the Commissioner's 1941 Standard Ordinary Mortality Table, the Commissioner's 1941 Standard Industrial Mortality Table, the Commissioner's 1958 Standard Ordinary Mortality Table, the Commissioner's 1980 Standard Ordinary Mortality Table or any more recent table made applicable to life insurers;

- (2) For annuity and pure endowment certificates, for total and permanent disability benefits, for accidental death benefits and for non-cancellable accident and health benefits - such tables as are authorized for use by life insurers in this State.

All of the above shall be under valuation methods and standards (including interest assumptions) in accordance with the laws of this State applicable to life insurers issuing policies containing like benefits.

(c) The Commissioner of Insurance may, in his or her discretion, accept other standards for valuation if the Commissioner finds that the reserves produced thereby will not be less in the aggregate than reserves computed in accordance with the minimum valuation standard herein prescribed. The Commissioner of Insurance may, in his or her discretion, vary the standards of mortality applicable to all benefit contracts on substandard lives or other extra hazardous lives by any society authorized to do business in this State.

(d) Any society, with the consent of the Commissioner of Insurance of the state of domicile of the society and under such conditions, if any, which the Commissioner may impose, may establish and maintain reserves on its certificates in excess of the reserves required thereunder, but the contractual rights of any benefit member shall not be affected thereby.

" § 58-340.26. *Reports.*--Reports shall be filed in accordance with the provisions of this section.

(a) Every society transacting business in this State shall annually, on or before the first day of March, unless for cause shown such time has been extended by the Commissioner of Insurance, file with the Commissioner of Insurance a true statement of its financial condition, transactions and affairs for the preceding calendar year and pay the fee specified in G.S. 58-63 for filing same. The statement shall be in general form and context as approved by the National Association of Insurance Commissioners for fraternal benefit societies and as supplemented by additional information required by the Commissioner of Insurance.

(b) As part of the annual statement herein required, each society shall, on or before the first day of March, file with the Commissioner of Insurance a valuation of its certificates in force on December 31st last preceding, provided the Commissioner of Insurance may, in his or her discretion for cause shown, extend the time for filing such valuation for not more than two calendar months. Such valuation shall be done in accordance with the standards specified in G.S. 58-340.25. Such valuation and underlying data shall be certified by a qualified actuary or, at the expense of the society, verified by the actuary of the Department of Insurance of the state of domicile of the

society.

(c) A society neglecting to file the annual statement in the form and within the time provided by this section shall forfeit one hundred dollars (\$100.00) for each day during which such neglect continues, and, upon notice by the Commissioner of Insurance to that effect, its authority to do business in this State shall cease while such default continues.

" § 58-340.27. *Annual License.*--Societies which are now authorized to transact business in this State may continue such business until the 30th day of June next succeeding the effective date of this Article. The authority of such societies and all societies hereafter licensed, may thereafter be renewed annually, but in all cases to terminate on the 30th day of the succeeding June. However, a license so issued shall continue in full force and effect until the new license be issued or specifically refused. For each such license or renewal the society shall pay the Commissioner of Insurance the fee specified in G.S. 58-63. A duly certified copy or duplicate of such license shall be **prima facie** evidence that the licensee is a fraternal benefit society within the meaning of this Chapter.

" § 58-340.28. *Examination of Societies; No Adverse Publications.*--(a) The Commissioner of Insurance, or any person he or she may appoint, may examine any domestic, foreign or alien society transacting or applying for admission to transact business in this State in the same manner as authorized for examination of domestic, foreign or alien insurers. Requirements of notice and an opportunity to respond before findings are made public as provided in the laws regulating insurers shall also be applicable to the examination of societies.

(b) The expense of each examination and of each valuation, including compensation and actual expense of examiners, shall be paid by the society examined or whose certificates are valued, upon statements furnished by the Commissioner of Insurance.

" § 58-340.29. *Foreign or Alien Society - Admission.*--No foreign or alien society shall transact business in this State without a license issued by the Commissioner of Insurance. Any such society desiring admission to this State shall comply substantially with the requirements and limitations of this Article applicable to domestic societies. Any such society may be licensed to transact business in this State upon filing with the Commissioner of Insurance:

(a) a duly certified copy of its Articles of Incorporation;

(b) a copy of its bylaws, certified by its secretary or corresponding officer;

(c) a power of attorney to the Commissioner of Insurance as prescribed in Section 35;

(d) a statement of its business under oath of its president and secretary or corresponding officers in a form prescribed by the Commissioner of Insurance, duly verified by an examination made by the supervising insurance official of its home state or other state, territory, province or country, satisfactory to the Commissioner of Insurance of this State;

(e) certification from the proper official of its home state, territory, province or country that the society is legally incorporated and licensed to transact business therein;

(f) copies of its certificate forms; and

(g) such other information as the Commissioner of Insurance may deem necessary;

and upon a showing that its assets are invested in accordance with the provisions of this Chapter.

" § 58-340.30. *Injunction - Liquidation - Receivership of Domestic Society.*--(a) When the Commissioner of Insurance upon investigation finds that a domestic society:

- (1) has exceeded its powers;
- (2) has failed to comply with any provision of this Article;
- (3) is not fulfilling its contracts in good faith;
- (4) has a membership of less than 400 after an existence of one year or more; or
- (5) is conducting business fraudulently or in a manner hazardous to its members, creditors, the public or the business;

the Commissioner shall notify the society of such deficiency or deficiencies and state in writing the reasons for his or her dissatisfaction. The Commissioner shall at once issue a written notice to the society requiring that the deficiency or deficiencies which exist are corrected. After such notice the society shall have a 30 day period in which to comply with the Commissioner's request for correction, and if the society fails to comply the Commissioner shall notify the society of such findings of noncompliance and require the society to show cause on a date named why it should not be enjoined from carrying on any business until the violation complained of shall have been corrected, or why an action under Article 41 of Chapter 1 of the General Statutes (*quo warranto*) should not be commenced against the society.

(b) If on such date the society does not present good and sufficient reasons why it should not be so enjoined or why such action should not be commenced, the Commissioner of Insurance may present the

facts relating thereto to the Attorney General who shall, if he or she deems the circumstances warrant, commence an action to enjoin the society from transacting business or under Article 41 of Chapter 1 of the General Statutes (*quo warranto*).

(c) The court shall thereupon notify the officers of the society of a hearing. If after a full hearing it appears that the society should be so enjoined or liquidated or a receiver appointed, the court shall enter the necessary order. No society so enjoined shall have the authority to do business until:

- (1) the Commissioner of Insurance finds that the violation complained of has been corrected;
- (2) the costs of such action shall have been paid by the society if the court finds that the society was in default as charged;
- (3) the court has dissolved its injunction; and
- (4) the Commissioner of Insurance has reinstated the certificate of authority.

(d) If the court orders the society liquidated, it shall be enjoined from carrying on any further business, whereupon the receiver of the society shall proceed at once to take possession of the books, papers, money and other assets of the society and, under the direction of the court, proceed forthwith to close the affairs of the society and to distribute its funds to those entitled thereto.

(e) No action under this section shall be recognized in any court of this State unless brought by the Attorney General upon request of the Commissioner of Insurance. Whenever a receiver is to be appointed for a domestic society, the court shall appoint the Commissioner of Insurance as such receiver.

(f) The provisions of this section relating to hearing by the Commissioner of Insurance, action by the Attorney General at the request of the Commissioner of Insurance, hearing by the court, injunction and receivership shall be applicable to a society which shall voluntarily determine to discontinue business.

" § 58-340.31. *Suspension, Revocation or Refusal of License of Foreign or Alien Society.*--(a) When the Commissioner of Insurance upon investigation finds that a foreign or alien society transacting or applying to transact business in this State:

- (1) has exceeded its powers;
- (2) has failed to comply with any of the provisions of this Article;

- (3) is not fulfilling its contracts in good faith; or
- (4) is conducting its business fraudulently or in a manner hazardous to its members or creditors or the public;

the Commissioner shall notify the society of such deficiency or deficiencies and state in writing the reasons for his or her dissatisfaction. The Commissioner shall at once issue a written notice to the society requiring that the deficiency or deficiencies which exist are corrected. After such notice the society shall have a 30 day period in which to comply with the Commissioner's request for correction, and if the society fails to comply the Commissioner shall notify the society of such findings of noncompliance and require the society to show cause on a date named why its license should not be suspended, revoked or refused. If on such date the society does not present good and sufficient reason why its authority to do business in this State should not be suspended, revoked or refused, the Commissioner may suspend or refuse the license of the society to do business in this State until satisfactory evidence is furnished to the Commissioner that such suspension or refusal should be withdrawn or the Commissioner may revoke the authority of the society to do business in this State.

(b) Nothing contained in this section shall be taken or construed as preventing any such society from continuing in good faith all contracts made in this State during the time such society was legally authorized to transact business herein.

" § 58-340.32. *Injunction.*--No application or petition for injunction against any domestic, foreign or alien society, or lodge thereof, shall be recognized in any court of this State unless made by the Attorney General upon request of the Commissioner of Insurance.

" § 58-340.33. *Licensing of Agents.*--(a) Agents of societies shall be licensed in accordance with the provisions of the general insurance laws regulating the licensing, revocation, suspension or termination of license of resident and nonresident agents; provided that agents licensed pursuant to former G.S. 58-268 as of July 1, 1977, shall be exempt from examination.

(b) No examination or license shall be required of any regular salaried officer, employee or member of a licensed society who devotes substantially all of his or her services to activities other than the solicitation of fraternal insurance contracts from the public, and who receives for the solicitation of such contracts no commission or other compensation directly dependent upon the amount of business obtained.

" § 58-340.34. *Unfair Methods of Competition and Unfair and Deceptive Acts and Practices.*--Every society authorized to do business in this State shall be subject to the provisions of Article 3A of this

Chapter relating to unfair methods of competition and unfair or deceptive acts or practices; provided, however, that nothing in such provisions shall be construed as applying to or affecting the right of any society to determine its eligibility requirements for membership, or be construed as applying to or affecting the offering of benefits exclusively to members or persons eligible for membership in the society by a subsidiary corporation or affiliated organization of the society.

"§ 58-340.35. *Service of Process.*--(a) Every society authorized to do business in this State shall appoint in writing the Commissioner of Insurance and each successor in office to be its true and lawful attorney upon whom all lawful process in any action or proceeding against it shall be served, and shall agree in such writing that any lawful process against it which is served on said attorney shall be of the same legal force and validity as if served upon the society, and that the authority shall continue in force so long as any liability remains outstanding in this State. Copies of such appointment, certified by said Commissioner of Insurance, shall be deemed sufficient evidence thereof and shall be admitted in evidence with the same force and effect as the original thereof might be admitted.

(b) Service shall only be made upon the Commissioner of Insurance, or if absent, upon the person in charge of the Commissioner's office. It shall be made in duplicate and shall constitute sufficient service upon the society. When legal process against a society is served upon the Commissioner of Insurance, the Commissioner shall forthwith forward one of the duplicate copies by registered mail, prepaid, directed to the secretary or corresponding officer. No such service shall require a society to file its answer, pleading or defense in less than 30 days from the date of mailing the copy of the service to a society. Legal process shall not be served upon a society except in the manner herein provided. At the time of serving any process upon the Commissioner of Insurance, the plaintiff or complainant in the action shall pay to the Commissioner of Insurance a fee of five dollars (\$5.00).

"§ 58-340.36. *Review.*--All decisions and findings of the Commissioner of Insurance made under the provisions of this Article shall be subject to review under the Administrative Procedure Act.

"§ 58-340.37. *Penalties.*--(a) Any person, officer, member, or examining physician of any society authorized to do business under this Article who shall knowingly or willfully make any false or fraudulent statement or representation in or with reference to any

application for membership, or for the purpose of obtaining money from or benefit in any society transacting business under this Article, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than one thousand dollars (\$1,000) nor more than five thousand dollars (\$5,000), or imprisoned for not less than 30 days nor more than one year, or both, in the discretion of the court.

(b) Any person who shall solicit membership for, or in any manner assist in procuring membership in any fraternal benefit society not licensed to do business in this State, or who shall solicit membership for, or in any manner assist in procuring membership in any such society not authorized as herein provided to do business as herein defined in this State, shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than one thousand dollars (\$1,000) nor more than five thousand dollars (\$5,000).

(c) Any society, or any officer, agent, or employee thereof, neglecting or refusing to comply with, or violating, any of the provisions of this Article, the penalty for which neglect, refusal, or violation is not specified in this section, shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine not to exceed five thousand dollars (\$5,000).

(d) Any person violating the provisions of G.S. 58-340.14 shall be guilty of a felony, and upon conviction shall be liable to a fine of not more than fifteen thousand dollars (\$15,000), or to imprisonment for not more than five years, or to both fine and imprisonment.

"§ 58-340.38. *Exemption of Certain Societies.*--(a) Nothing contained in this Article shall be so construed as to affect or apply to:

- (1) grand or subordinate lodges of societies, orders or associations now doing business in this State which provide benefits exclusively through local or subordinate lodges;
- (2) orders, societies or associations which admit to membership only persons engaged in one more crafts or hazardous occupations, in the same or similar lines of business, insuring only their own members and their families, and the ladies' societies or ladies' auxiliaries to such orders, societies or associations;
- (3) domestic societies which limit their membership to employees of a particular city or town, designated firm, business house or corporation which provide for a death benefit of not more than four hundred dollars (\$400.00) or disability benefits of not more than three hundred fifty

dollars (\$350.00) to any person in any one year, or both; or

- (4) domestic societies or associations of a purely religious, charitable or benevolent description, which provide for a death benefit of not more than four hundred dollars (\$400.00) or for disability benefits of not more than three hundred fifty dollars (\$350.00) to any one person in any one year, or both.

(b) Any such society or association described in subsections (a)(3) or (a)(4) supra which provides for death or disability benefits for which benefit certificates are issued, and any such society or association included in subsection (a)(4) which has more than 1000 members, shall not be exempted from the provisions of this Article but shall comply with all requirements thereof.

(c) No society which, by the provisions of this section, is exempt from the requirements of this Article, except any society described in subsection (a)(2) supra, shall give or allow, or promise to give or allow to any person any compensation for procuring new members.

(d) Every society which provides for benefits in case of death or disability resulting solely from accident, and which does not obligate itself to pay natural death or sick benefits shall have all of the privileges and be subject to all the applicable provisions and regulations of this Article except that the provisions thereof relating to medical examination, valuations of benefit certificates, and incontestability, shall not apply to such society.

(e) The Commissioner of Insurance may require from any society or association, by examination or otherwise, such information as will enable the Commissioner to determine whether such society or association is exempt from the provisions of this Article.

(f) Societies, exempted under the provisions of this section, shall also be exempt from all other provisions of the general insurance laws of this State.

" § 58-340.39. *Severability.*--If any provision of this Article or the application of such provision to any circumstance is held invalid, the remainder of the Article or the application of the provision to other circumstances, shall not be affected thereby.

Article 31B

FRATERNAL ORDERS

" § 58-340.51. *General insurance law not applicable.*--Nothing in the general insurance laws, except such as apply to fraternal orders shall be construed to extend to benevolent associations incorporated

under the laws of this State that only levy an assessment on the members to create a fund to pay the family of a deceased member and make no profit therefrom, and do not solicit business through agents.

" § 58-340.52. *Fraternal orders defined.*--Every incorporated association, order, or society doing business in this State on the lodge system, with ritualistic form of work and representative form of government, for the purpose of making provision for the payment of benefits of three hundred dollars (\$300.00) or less in case of death, sickness, temporary or permanent physical disability, either as the result of disease, accident, or old age, formed and organized for the sole benefit of its members and their beneficiaries, and not for profit, is hereby declared to be a 'fraternal order'. Societies and orders which do not make insurance contracts or collect dues or assessments therefor, but simply pay burial or other benefits out of the treasury of their orders, and use their funds for the purpose of building homes or asylums for the purpose of caring for and educating orphan children and aged and infirm people in this State, shall not be considered as 'fraternal orders'; and such order or association paying death or disability benefits may also create, maintain, apply, or disburse among its membership a reserve or emergency fund as may be provided in its constitution or bylaws; but no profit or gain may be added to the payments made by a member.

" § 58-340.53. *Funds derived from assessments and dues.*--The fund from which the payment of benefits, as provided for in G.S. 58-340.52, shall be made, and the fund from which the expenses of such association, order or society shall be defrayed, shall be derived from assessments or dues collected from its members. Such societies or associations shall be governed by the laws of the State governing fraternal orders or societies, and are exempt from the provisions of all general insurance laws of this State, and no law hereafter passed shall apply to such orders or societies unless fraternal orders or societies are designated therein.

" § 58-340.54. *Appointment of member as receiver or collector; appointee as agent for order or society; rights of members.*--Assessments and dues referred to in G.S. 58-340.52 and G.S. 58-340.53 may be collected, receipted, and remitted by a member or officer of any local or subordinate lodge of any fraternal order or society when so appointed or designated by any grand, district, or subordinate lodge or officer, deputy, or representative of the same, there being no regular licensed agent or deputy of said grand lodge charged with said duties; but any person so collecting said dues or assessments shall be the

agent or representative of such fraternal order or society, or any department thereof, and shall bind them by their acts in collecting and remitting said amounts so collected. Under no circumstances, regardless of any agreement, bylaws, contract, or notice, shall said officer or collector be the agent or representative of the individual member from whom any such collection is made; nor shall said member be responsible for the failure of such officer or collector to safely keep, handle, or remit said dues or assessments so collected, in accordance with the rules, regulations, or bylaws of said order or society; nor shall said member, regardless of any rules, regulations, or bylaws to the contrary, forfeit any rights under his certificate of membership in said fraternal order or society by reason of any default or misconduct of any said officer or member so acting.

" § 58-340.55. *Meetings of governing body; principal office.*--Any such order or society incorporated and organized under the laws of this State may provide for the meeting of its supreme legislative or governing body in any other state, province, or territory wherein such order or society has subordinate lodges, and all business transacted at such meetings is as valid in all respects as if the meetings were held in this State; but the principal business office of such order or society shall always be kept in this State.

" § 58-340.56. *Conditions precedent to doing business.*--Any such fraternal order, society, or association as defined by this Article, chartered and organized in this State or organized and doing business under the laws of any other state, district, province, or territory, having the qualifications required of domestic societies of like character, upon satisfying the Commissioner of Insurance that its business is proper and legitimate and so conducted, may be admitted to transact business in this State upon the same conditions as are prescribed by this Chapter for admitting and authorizing foreign insurance companies to do business in this State, except that such fraternal orders shall not be required to have the capital required of such insurance companies. Organizers or agents shall be licensed without requiring an examination; provided, organizers or agents who are engaged in or intend to engage in the sale of individual policies of life insurance shall take the examination required of life insurance agents. Those organizers or agents licensed for the sale of insurance pursuant to former G.S. 58-268 as of July 1, 1977, shall be exempt from examination.

" § 58-340.57. *Certain lodge systems exempt.*--The following beneficial orders or societies shall be exempt from the requirements of this Article, and shall not be required to pay any license tax or fees nor make any report to the Commissioner of Insurance, unless the assessments collected for death benefits by the supreme lodge amount to at least three hundred dollars (\$300.00) in one year: Beneficial fraternal orders, or societies incorporated under the laws of this State, which are conducted under the lodge system which have the supreme lodge or governing body located in this State, and which are so organized that the membership consists of members of subordinate lodges; that the subordinate lodges accept for membership only residents of the county in which such subordinate lodge is located; that each subordinate lodge issues certificates, makes assessments, and collects a fund to pay benefits to the widows and orphans of its own deceased members and their families, each lodge independently of the others, for itself and independently of the supreme lodge; that each lodge controls the fund for this purpose; that in addition to the benefits paid by each subordinate lodge to its own members, the supreme lodge provides for an additional benefit for such of the members of the subordinate lodges as are qualified, at the option of the subordinate lodge members; that such organization is not conducted for profit, has no capital stock, and has been in operation for 10 years in this State.

The Commissioner of Insurance may require the chief or presiding officer, or the secretary, to file annually an affidavit that such organization is entitled to this exemption.

" § 58-340.58. *Insurance on children.*--Any fraternal order or society authorized pursuant to this Article to do business in this State and operating on the lodge plan may provide in its constitution and bylaws, in addition to other benefits provided for therein, for the payment of death or annuity benefits upon the lives of children between the ages of one and 16 years at next birthday, for whose support and maintenance a member of such order or society is responsible. The order or society may at its option organize and operate branches for such children and membership in local lodges, and initiation therein shall not be required of such children, nor shall they have any voice in the management of the order or society. The total benefits payable as above provided shall in no case exceed the following amounts at ages at next birthday at time of death, respectively, as follows: one year, twenty dollars (\$20.00); two years, fifty dollars (\$50.00); three years, seventy-five dollars (\$75.00); four years, one hundred dollars (\$100.00); five years, one hundred twenty-five dollars (\$125.00); six years, one hundred fifty dollars (\$150.00); seven years, two hundred dollars (\$200.00); eight years, two hundred

fifty dollars (\$250.00); nine years, three hundred dollars (\$300.00); 10 years, four hundred dollars (\$400.00); 11 years, five hundred dollars (\$500.00); 12 years, six hundred dollars (\$600.00); 13 years, seven hundred dollars (\$700.00); 14 years, eight hundred dollars (\$800.00); 15 years, nine hundred dollars (\$900.00); 16 years, one thousand dollars (\$1,000).

" § 58-340.59. *Medical examination; certificates and contributions.*--No benefit certificate as to any child shall take effect until after medical examination or inspection by a licensed medical practitioner, in accordance with the laws of the order or society, nor shall any such benefit certificate be issued unless the order or society shall simultaneously put in force at least 500 such certificates, on each of which at least one assessment has been paid, nor where the number of lives represented by such certificate falls below 500. The death benefit contributions to be made upon such certificate shall be based upon the "Standard Mortality Table" or the "English Life Table Number Six," and a rate of interest not greater than four percent (4%) per annum, upon a higher standard or upon such mortality, morbidity, and interest standards permitted by the laws of this State for use by life insurance companies; but contributions may be waived or returns may be made from any surplus held in excess of reserve and other liabilities, as provided in the bylaws; and extra contributions shall be made if the reserves hereafter provided for become impaired.

" § 58-340.60. *Reserve fund; exchange of certificates.*--Any order or society entering into such insurance agreements shall maintain on all such contracts the reserve required by the standard of mortality and interest adopted by the order or society for computing contributions as provided in G.S. 58-340.58, and the funds representing the benefit contributions and all accretions thereon shall be kept as separate and distinct funds, independent of the other funds of the order or society, and shall not be liable for nor used for the payment of the debts and obligations of the order or society other than the benefits herein authorized. An order or society may provide that when a child reaches the minimum age for initiation into membership in such order or society, any benefit certificate issued hereunder may be surrendered for cancellation and exchanged for any other form of certificate issued by the order or society: Provided, that such surrender will not reduce the number of lives insured below 500; and upon the issuance of such new certificate any reserve upon the original certificate herein provided for shall be transferred to the credit of the new certificate.

Neither the person who originally made application for benefits on account of such child, nor the beneficiary named in such original certificate, nor the person who paid the contributions, shall have any vested right in such new certificate, the free nomination of a beneficiary under the new certificate being left to the child so admitted to benefit membership.

" § 58-340.61. *Separation of funds.*--An entirely separate financial statement of the business transactions and of assets and liabilities arising therefrom shall be made in its annual report to the Commissioner of Insurance by an order or society availing itself of the provisions hereof. The separation of assets, funds, and liabilities required hereby shall not be terminated, rescinded, or modified, nor shall the funds be diverted for any use other than as specified in the preceding section, as long as any certificates issued hereunder remain in force, and this requirement shall be recognized and enforced in any liquidation, reinsurance, merger, or other change in the condition or the status of the order or society.

" § 58-340.62. *Payments to expense or general fund.*--Any order or society shall have the right to provide in its laws and the certificate issued hereunder for specified payments on account of the expense or general fund, which payments shall or shall not be mingled with the general fund of the order or society, as its constitution and bylaws may provide.

" § 58-340.63. *Continuation of certificates.*--In the event of the termination of membership in the order or society by the person responsible for the support of any child on whose account a certificate may have been issued as provided herein, the certificate may be continued for the benefit of the estate of the child, provided the contributions are continued, or for the benefit of any other person responsible for the support and maintenance of such child who shall assume the payment of the required contributions.

" § 58-340.64. *Appointment of trustees to hold property.*--The lodges of Masons, Odd Fellows, Knights of Pythias, camps of Woodmen of the World, councils of the Junior Order of United American Mechanics, orders of the Elks, Young Men's Christian Associations, Young Women's Christian Associations and other benevolent or fraternal orders and societies may appoint from time to time suitable persons trustees of their bodies or societies, in such manner as they deem proper, which trustees, and their successors, shall have power to receive, purchase, take, and hold property, real and personal, in trust for such society or body. The trustees shall have power, when

instructed so to do by resolution adopted by the order, society or body which they represent, to mortgage or sell and convey in fee simple any real or personal property owned by the order, society or body; and the conveyances so made by the trustees shall be effective to pass the property in fee simple to the purchaser or to the mortgagee or trustee for the purposes in such conveyance or mortgage expressed. If there shall be no trustee, then any real or personal property which could be held by such trustees shall vest in and be held by such charitable, benevolent, religious, or fraternal orders and societies, respectively, according to such intent.

"§ 58-340.65. *Unauthorized wearing of badges, etc.*--Any person who fraudulently and willfully wears the badge or button of any fraternal organization or society, either in the identical form or in such near resemblance thereto as to be a colorable imitation thereof, or who fraudulently and willfully uses the name of any such order, society or organization, the titles of its officers, or its insignia, ritual, or ceremonies, unless entitled to wear or use the same under the constitution and bylaws, rules and regulations of such fraternal organization, society, or order, shall be deemed guilty of a misdemeanor, and shall upon conviction, be punished by a fine of not more than five hundred dollars (\$500.00) or imprisonment for not more than 30 days, in the discretion of the court."

Sec. 3. This act shall become effective January 1, 1988.

In the General Assembly read three times and ratified this the 26th day of June, 1987.

S.B. 261

CHAPTER 484

AN ACT TO AUTHORIZE WILSON COUNTY TO LEVY A ROOM OCCUPANCY AND TOURISM DEVELOPMENT TAX.

The General Assembly of North Carolina enacts:

Section 1. Occupancy Tax. (a) Authorization and scope. The Wilson County Board of Commissioners may by resolution, after not less than ten (10) days' public notice and after a public hearing held pursuant thereto, levy a room occupancy tax of three percent (3%) of the gross receipts derived from the rental of any room, lodging, or similar accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within the county that is subject to sales tax imposed by the State under G.S. 105-164.4(3). This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious

organizations, by summer camps, or by businesses that offer to rent no more than five units.

(b) Collection. Every operator of a business subject to the tax levied under this section shall, on and after the effective date of the levy of the tax, collect the tax. This tax shall be collected as part of the charge for furnishing a taxable accommodation. The tax shall be stated and charged separately from the sales records, and shall be paid by the purchaser to the operator of the business as trustee for and on account of the county. The tax shall be added to the sales price and shall be passed on to the purchaser instead of being borne by the operator of the business. The county shall design, print, and furnish to all appropriate businesses and persons in the county the necessary forms for filing returns and instructions to ensure the full collection of the tax.

(c) Administration. The county shall administer a tax levied under this section. A tax levied under this section is due and payable to the county finance officer in monthly installments on or before the 15th day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the 15th day of each month, prepare and render a return on a form prescribed by the county. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied.

A return filed with the county finance officer under this section is not a public record as defined by G.S. 132-1 and may not be disclosed except as required by law.

(d) Penalties. A person, firm, corporation, or association who fails or refuses to file the return required by this section shall be subject to and pay a penalty of ten dollars (\$10.00) for each day's omission. In case of failure or refusal to file the return or pay the tax for a period of thirty (30) days after the time required for filing the return or for paying the tax, there shall be an additional tax, as a penalty, of five percent (5%) of the tax due in addition to any other penalty, with an additional tax of five percent (5%) for each additional month or fraction thereof until the tax is paid.

Any person who willfully attempts in any manner to evade a tax imposed under this section or who willfully fails to pay the tax or make and file a return shall, in addition to all other penalties provided by law, be guilty of a misdemeanor and shall be punishable by a fine not to exceed one thousand dollars (\$1,000), imprisonment not to exceed six months, or both.

(e) Distribution and use of tax revenue. Wilson County shall, on a monthly basis, remit the net proceeds of the occupancy tax to the Wilson County Tourism Development Authority. The Authority may spend funds remitted to it under this subsection only to further the development of travel, tourism, and conventions in Wilson County through advertising and promotion, to sponsor tourist-oriented events and activities in Wilson County, and to finance tourist-related capital projects in Wilson County. As used in this subsection, "net proceeds" means gross proceeds less the cost to the county of administering and collecting the tax, which may not exceed five percent (5%) of the gross proceeds.

(f) Effective date of levy. A tax levied under this section shall become effective on the date specified in the resolution levying the tax. That date must be the first day of a calendar month, however, and may not be earlier than the first day of the second month after the date the resolution is adopted.

(g) Repeal. A tax levied under this section may be repealed by a resolution adopted by the Wilson County Board of Commissioners. Repeal of a tax levied under this section shall become effective on the first day of a month and may not become effective until the end of the fiscal year in which the repeal resolution was adopted. Repeal of a tax levied under this section does not affect a liability for a tax that was attached before the effective date of the repeal, nor does it affect a right to a refund of a tax that accrued before the effective date of the repeal.

Sec. 2. Tourism Development Authority. (a) Appointment and membership. When the board of commissioners adopts a resolution levying a room occupancy tax under this act, it shall also adopt a resolution creating the Wilson County Tourism Development Authority, which shall be a public authority under the Local Government Budget and Fiscal Control Act. The resolution shall provide that the Authority shall be composed of the following seven members:

- (1) A Wilson County Commissioner appointed by the board of commissioners;
- (2) A member of the Wilson City Council appointed by the city council;
- (3) Three owners or operators of motels, hotels, or other taxable accommodations in Wilson County that have at least 5 units, one of whom shall be appointed by the Wilson City Council, one by the Wilson County Board of Commissioners, and one by the Wilson County Chamber of Commerce; and

- (4) Two individuals involved in the tourist business who have demonstrated an interest in tourist development and do not own or operate hotels, motels, or other taxable tourist accommodations, appointed as follows: one by the Wilson City Council and one by the Wilson County Board of Commissioners.

All members of the Authority shall serve without compensation. Vacancies shall be filled in the same manner as original appointments. Members appointed to fill vacancies shall serve for the remainder of the unexpired term. The Authority shall elect each year from its membership a chairman. No member may serve as chairman more than two one-year terms in succession. The Authority shall meet at the call of the chairman or of any three members and shall adopt rules of procedure to govern its meetings. The Finance Officer for Wilson County shall be the ex officio finance officer of the Authority.

(b) Terms of office. Members of the Authority shall serve three-year terms except that the initial appointees shall serve the following terms:

- (1) Members appointed pursuant to subdivisions (a)(1) and (a)(2) of this section shall serve one-year terms.
- (2) Of the members appointed pursuant to subdivision (a)(3) of this section, the appointee of the Wilson City Council shall serve a three-year term and the appointee of the board of commissioners shall serve a two-year term.
- (3) Of the members appointed pursuant to subdivision (a)(4) of this section, the appointee of the Wilson City Council shall serve a one-year term, the appointee of the board of commissioners shall serve a three-year term, and the appointee of the Chamber of Commerce shall serve a two-year term.

(c) Powers and duties. The Authority may contract with any person, firm, or agency to assist it in carrying out the purposes for which the tax proceeds levied by this act may be expended. The board of county commissioners may from time to time determine an appropriate percentage of net proceeds that may be expended for administrative services.

(d) Reports. The Authority shall report quarterly and at the close of the fiscal year to the board of county commissioners on its receipts and expenditures for the preceding quarter and for the year in such detail as the board may require.

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 26th day of June, 1987.

AN ACT TO CLARIFY THE POWER OF COUNTY BOARDS OF ELECTIONS TO HOLD REQUIRED MEETINGS FOR APPROVAL OF ABSENTEE BALLOTS AT ALTERNATE TIMES, AND MAKING CONFORMING CHANGES CONCERNING ABSENTEE VOTING.

The General Assembly of North Carolina enacts:

Section 1. G.S. 163-230(2)a. is rewritten to read:

"a. Required Meeting of County Board of Elections. During the period commencing 60 days before an election, and until 30 days before the election, in which absentee ballots are authorized, the county board of elections shall hold one or more public meetings each week on a day and at an hour to be determined by the board for the purpose of action on applications for absentee ballots. Each member of the board shall be notified in writing of the day and hour such meetings shall be conducted. During the period opening 30 days before an election in which absentee ballots are authorized and closing at 5:00 P.M. on the ~~Thursday~~ Tuesday before the election, the county board of elections shall hold public meetings at 10:00 A.M. on Tuesday and Friday of each week, and it shall also hold public meetings at 10:00 A.M. on the eighth, sixth, ~~third~~ fourth and first days immediately preceding election day. These meetings shall be held at the county courthouse or at the elections board's office at the hour fixed by law. At these meetings the county board of elections shall pass upon applications for absentee ballots.

Upon a majority vote, the county board of elections may hold ~~the required any such~~ public meetings at an hour other than 10:00 A.M., and it may hold more than one session on each ~~Tuesday and Friday it is required to meet~~ day it meets and may set the hours of any additional sessions. If the board desires to exercise either or both of the options granted by the preceding sentence, it shall do so ~~prior to the date on which it is required to hold its first public meeting under the provisions of this subdivision and in time to give the notice required by the fourth paragraph of this lettered portion of this subdivision~~ no later than 70 days before the election; thereafter, no change shall be made in the hours or dates fixed for the board's public meetings on absentee ballot applications.

~~It shall not be necessary for the~~ The chairman of the county board of elections ~~to shall~~ give notice to other board members of ~~weekly the~~ schedule of meetings of the board ~~which are fixed as to time and place by this section.~~

If the county board of elections changes the time of holding its ~~Tuesday and Friday~~ meetings or provides for additional meetings ~~on Tuesdays and Fridays~~ in accordance with the terms of this subdivision, notice of the change in hour and notice of the schedule of additional meetings, if any, shall be published in a newspaper circulated in the county, and a notice thereof shall be posted at the courthouse door of the county, at least ~~one week prior to the time fixed for holding the first meeting under this subdivision~~ 65 days prior to the election. Similar notice shall also be given of the dates and hours of the weekly meetings held until 30 days before the election.

The county board of elections shall not be required to hold any of the meetings prescribed by this subdivision unless, since its last preceding meeting, it actually has received one or more applications for absentee ballots which it has not passed upon. When no meeting is to be held for this reason, the chairman shall notify each of the other members of the county board of elections that the scheduled public meeting will be not held and state the reasons for its cancellation."

Sec. 2. G.S. 163-22(k), G.S. 163-227(a), G.S. 163-229(b), G.S. 163-229(c), G.S. 163-230(2)a., G.S. 163-248(b), G.S. 163-248(c) and G.S. 163-227.3(a) are amended by deleting "60 days", each place those words appear, and substituting "50 days".

Sec. 3. G.S. 163-156(b)(3), G.S. 163-156(b)(7), G.S. 163-156(c)(3), G.S. 163-156(c)(5) are repealed.

Sec. 4. G.S. 120-20.1 is amended by adding a new subsection to read:

"(b1) In any part of a law enacted in the format provided by this section, the material deleted from existing law and the material being added to existing law are the only changes made, the setting out of material not deleted or added is for illustration only, and the fact that two different acts amend the same law, when one or more of those is in the format provided by this section, does not in itself create a conflict."

Sec. 5. Sections 1, 2, and 3 of this act shall become effective with respect to elections held on or after September 1, 1987, except that Section 2 of this act shall expire with respect to elections held on or after September 1, 1989. Section 4 of this act is effective upon ratification.

In the General Assembly read three times and ratified this the 26th day of June, 1987.

S.B. 653

CHAPTER 486

AN ACT TO PROVIDE FOR ANNEXATION OF CERTAIN PROPERTY TO THE TOWN OF RICHFIELD, SUBJECT TO REMOVAL FROM THE CORPORATE LIMITS IF THE VOTERS OF THE TOWN REJECT A SEWER BOND.

Whereas, the Town of Richfield is planning to hold a sewer bond referendum at a later date after enough funds have been acquired to make the balance feasible by user fees and property taxes; Now, therefore,

The General Assembly of North Carolina enacts:

Section 1. The corporate limits of the Town of Richfield are extended to include the following described territory:

AREA 1

Lying and being just East of the TOWN OF RICHFIELD, and BEGINNING at a point where the present city limits line intersects the West right-of-way line of High Rock Road, (SR #1005), and running thence with the West right-of-way line of said road in a Southern direction a distance of 2000 feet more or less and crossing NC Hwy. #49 to a point where the West right-of-way line of High Rock Road intersects the South right-of-way line of NC Hwy. #49; thence with the South right-of-way line of NC Hwy. #49 in a Northeast direction a distance of 3120 feet more or less to a point where the said right-of-way intersects the Northeast line of Cardinal Estates Subdivision extended; thence with the property line of Cardinal Estates Subdivision South 38 deg. 57 min. East a distance of 1209 feet more or less to Northwest right-of-way line of Bell Road, (SR #1627); thence with Northwest right-of-way line Bell Road a Southwest direction a distance of 1200 feet more or less to a point where it intersects the Northeast right-of-way line of Gold Branch Road, (SR #1507); thence with the Northeast right-of-way line of Gold Branch Road a Southeast direction a distance of 250 feet more or less to a point where it intersects the Southeast right-of-way line of Deese Road, (SR #1506); thence with the Southeast right-of-way line of Deese Road a Southwest direction a distance of 1400 feet more or less to a point where it intersects the common property line of Ronald T. Burleyson, (Deed Book 311, Page 360) and Thomas G. Redwine (Deed Book 257, Page 986); thence with said common property line and a line of J.F. Fisher a Southwest direction a distance of 1800 feet more or less to a common corner of J.F. Fisher and R.R. Ingram in the line of Ronald T. Burleyson; thence with the common property line of J.F. Fisher, R.R. Ingram. and others in a Southeast direction

a distance of 1380 feet more or less to the West property line of Helen Mauney (Deed Book 298, Page 283); thence with the West property line of Helen Mauney in a South direction a distance of 2460 feet more or less to a point where it intersects the Northeast right-of-way line of US Hwy. #52 just south of the D. F. Ritchie homeplace; thence with the Northeast right-of-way line of US Hwy. #52 in a Northwest direction a distance of 3500 feet more or less to a point where it intersects the present city limits line.

AREA 2

Lying and being just Southwest of the TOWN OF RICHFIELD, and BEGINNING at a point where the present city limits line intersects the common property line of James Ritchie (Deed Book 274, Page 260) and Spencer Goodman (Deed Book 152, Pages 125 & 272), and runs thence with their common property line in a South direction a distance of 600 feet more or less to the point of Spencer Goodman's corner; thence with Spencer Goodman's property line in a Southeast direction a distance of 400 feet more or less to a point located in Southeast right-of-way line of the Millingport Road (SR #1134); thence with Southeast right-of-way line of Millingport Road in a Southwest direction a distance of 30 feet more or less to a point located in said right-of-way and being in a Southwest direction a distance of 200 feet as measured at right angles from the West right-of-way line of the Old Salisbury Road; thence in a South direction a line parallel to and 200 feet West of the West right-of-way line of the Old Salisbury Road a distance of 3240 feet more or less to a point where said line intersects the property line of Ray Barringer (Deed Book 157, Page 50 and Deed Book 218, Page 60); thence with property line of Ray Barringer in a Northeast direction and crossing the Old Salisbury Road, 270 feet more or less to the East right-of-way line of the Old Salisbury Road; thence with the East right-of-way line of the Old Salisbury Road in a North direction 740 feet more or less to a point where said right-of-way line intersects the common property line of Ruby Whitley (Deed Book 180, Page 134) and Sherri Stein (Deed Book 305, Page 80); thence with said common property line in a Northeast direction 480 feet more or less to a point where it intersects the existing city limits line.

Sec. 2. If at the first referendum on issuance of sewer bonds in the Town of Richfield after the effective date of this act, such sewer bonds are not approved, then effective on the 30th day of June which occurs more than one year after the date of the referendum, the territory described in Section 1 of this act is removed from the corporate limits of the Town of Richfield, but such removal does not affect the validity of any taxes or assessments.

Sec. 3. This act shall become effective June 30, 1987.

In the General Assembly read three times and ratified this the 26th day of June, 1987.

H.B. 425

CHAPTER 487

AN ACT TO PROVIDE THAT NONRESIDENTS WHO FISH OUTSIDE NORTH CAROLINA WATERS MAY OBTAIN A VESSEL LICENSE DURING ANY MONTH THEREBY ALLOWING THEM TO LAND AND SELL FISH IN NORTH CAROLINA.

The General Assembly of North Carolina enacts:

Section 1. G.S. 113-152(a) reads as rewritten:

"(a) The following vessels are subject to the licensing requirements of this section:

- (1) All vessels engaged in commercial fishing operations in coastal fishing waters ~~and~~;
- (2) All North Carolina vessels engaged in commercial fishing operations without the State which result in landing and selling fish in North Carolina. North Carolina vessels are those which have their primary situs in North Carolina. Motorboats with North Carolina numbers under the provisions of Chapter 75A of the General Statutes are deemed to have their primary situs in North Carolina: documented vessels which list a North Carolina port as home port are deemed to have their primary situs in North Carolina; and
- (3) All nonresident vessels engaged in commercial fishing operations within the State or engaged in commercial fishing operations without the State that result in landing and selling fish in North Carolina.

'Commercial fishing operations' are all operations preparatory to, during, and subsequent to the taking of fish:

- (1) With the use of commercial fishing equipment; or
- (2) By any means, if a primary purpose of the taking is to sell the fish.

Commercial fishing operations also includes taking people fishing for hire.

It is unlawful for the owner of a vessel subject to licensing requirements to permit it to engage in commercial fishing operations without having first procured the appropriate license. It is unlawful for anyone to command such a vessel engaged in commercial fishing

operations without complying with the provisions of this section and of regulations made under the authority of this Article. It is unlawful for anyone to command such a vessel engaged in commercial fishing operations that does not meet the license requirements of this Article or of regulations made under the authority of the Article, or without making reasonably certain that all persons on board are in compliance with the provisions of this Article and regulations made under the authority of this Article. It is unlawful to participate in any commercial fishing operation in connection with which there is a vessel subject to licensing requirements not meeting the licensing requirements under the provisions of this Article or of regulations made under the authority of this Article.

Nothing in this section shall require the licensing of any vessel used solely for oystering, scalloping, or clamming by a person not required to have an oyster, scallop, and clam license under the provisions of G.S. 113-154. Spears or gigs shall not be deemed commercial fishing equipment unless used in an operation the purpose of which is the taking of fish for commercial purposes."

Sec. 2. G.S. 113-152(c) reads as rewritten:

"(c) Licenses are issued annually upon a calendar-year basis for vessels of various lengths (length measured straight through the cabin and along the deck, from end to end, excluding the sheer) and types as follows for the fees indicated:

- (1) Vessels, without motors, regardless of length when used in connection with other licensed vessels, no license required.
- (2) Vessels with or without motors not over 18 feet in length, one dollar (\$1.00) per foot.
- (3) Vessels with or without motors over 18 feet but not over 38 feet in length, one dollar and fifty cents (\$1.50) per foot.
- (4) Vessels with or without motors over 38 feet in length, three dollars (\$3.00) per foot.
- (4a) Vessels owned by persons who are not residents of North Carolina, two hundred dollars (\$200.00) or an amount equal to the nonresident fee charged by the nonresident's state, whichever is greater, in addition to the fee requirement otherwise applicable under this subsection or subsection (d).

~~Licenses for vessels owned by persons who are not residents of North Carolina or by corporations not incorporated under the laws of the State of North Carolina may be sold only during the month of January of each year for that calendar year.~~

- (5) Vessels engaged in menhaden fishing shall be taxed, based on tonnage, as prescribed in subsection (d).

Length is measured from end to end over the deck excluding sheer."

Sec. 3. G.S. 113-152(e) reads as rewritten:

"(e) Unless otherwise indicated, all licenses in this Article expire on December 31 of each year and are subject to the full license fee regardless of when issued. Unless a nonresident vessel is eligible for a land and sell license pursuant to G.S. 113-153, nonresident licenses may not be obtained from license agents and shall be obtained from the Morehead City offices of Marine Fisheries. Applications, including license fees, must be submitted by nonresidents and received by the Division at least 45 days prior to issuance of a license during which period it shall be ascertained whether the applicant would be denied a license under the standards in G.S. 113-166. When a license application is denied for violations of fisheries laws, whether the violations occurred in North Carolina or another jurisdiction, the license fees shall not be refunded and shall be applied to the costs of processing the application."

Sec. 4. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 26th day of June, 1987.

H.B. 586

CHAPTER 488

AN ACT TO AMEND THE NORTH CAROLINA CEMETERY ACT TO ENHANCE ADMINISTRATION AND PROTECTION OF THE PUBLIC.

The General Assembly of North Carolina enacts:

Section 1. G.S. 65-54 is rewritten to read:

"§ 65-54. *Annual budget of Commission; collection of funds.*--The Commission shall prepare an annual budget and shall collect the sums of money required for this budget from yearly fees and from any other sources provided in this Article. On or before July 1 of each year, each licensed cemetery will pay a license fee to be set by the Commission in an amount not to exceed three hundred dollars (\$300.00) per year; and in addition, an inspection fee for each grave space, niche, mausoleum crypt deeded and preneed cemetery merchandise contract for vaults, belowground crypts, mausoleum crypts, and memorials to be set by the Commission each year in order to defray the expenses of the Commission as set forth in the budget. Such additional fee shall not exceed one dollar and fifty cents (\$1.50) per grave space, niche, and mausoleum crypt deeded, and shall not exceed four dollars (\$4.00) per item in each preneed cemetery merchandise contract for vaults, belowground crypts, mausoleum

crypts and memorials."

Sec. 2. G.S. 65-55(c)(2) is amended by deleting "fifteen thousand dollars (\$15,000)" and substituting "thirty thousand dollars (\$30,000)".

Sec. 3. G.S. 65-64(c) is amended by deleting "fifteen thousand dollars (\$15,000)" and substituting "thirty thousand dollars (\$30,000)".

Sec. 4. G.S. 65-59 is amended at the first sentence by deleting the words "and thereby to" and substituting "or otherwise act to effectively".

Sec. 5. G.S. 65-63 is rewritten to read:

"§ 65-63. *Requirements for perpetual care fund.*--No such cemetery shall hereafter cause or permit advertising of a perpetual care fund in connection with the sale or offer for sale of its property unless the amount deposited in said funds shall be equal to not less than thirty-five dollars (\$35.00) per grave space, niche, or mausoleum crypt sold, this sum to be deposited in perpetual care fund as provided in G.S. 65-61 except as provided in G.S. 65-64. Nothing may prohibit an individual cemetery from requiring a perpetual care deposit for grave memorial markers to be deposited in the perpetual care fund so long as the same assessment is uniformly applied to all grave memorial markers installed in such cemetery.

Sec. 6. G.S. 65-64(e) is amended by deleting the language at the end of this subsection reading "and said deposits shall be not less than twenty-five dollars (\$25.00) per grave space and niche and forty-five dollars (\$45.00) per mausoleum crypt space" and by substituting the following: "and such deposits shall be not less than thirty-five dollars (\$35.00) per grave space, niche, or mausoleum crypt space."

Sec. 7. The first sentence of G.S. 65-66(m) is rewritten to read: "Within 30 days following the execution of a contract for the sale of personal property or performance of services, a purchaser may cancel his contract by giving written notice to the seller."

Sec. 8. G.S. 65-53(1) is amended to add the following sentence: "The Commission is authorized and empowered to employ such staff, including legal counsel, as may be necessary."

Sec. 9. This act shall become effective July 1, 1987.

In the General Assembly read three times and ratified this the 26th day of June, 1987.

AN ACT TO MAKE CERTAIN AMENDMENTS TO THE RIGHT TO KNOW ACT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 95-174(i) reads as rewritten:

~~"(i) 'Fire Company' shall mean the company or firehouse or other administrative unit within the Fire Department located closest to the facility."~~

Sec. 2. G.S. 95-174(r) reads as rewritten:

"(r) 'NCOSHA Standard' shall mean the currently adopted Hazard Communication Standard adopted by the Occupational Safety and Health Division of North Carolina Department of Labor in 13 North Carolina Administrative Code 7C .0101(a)(99) ~~and in effect on April 24, 1985~~, as amended."

Sec. 3. G.S. 95-191 reads as rewritten:

"§ 95-191. *Hazardous Substance List.*--(a) All employers who manufacture, process, use, store, or produce hazardous chemicals, shall compile and maintain a Hazardous Substance List which shall contain the following information for each hazardous chemical ~~normally used or~~ stored in the facility in quantities of 55 gallons or 500 pounds, whichever is greater:

(1) The chemical name or the common name used on the MSDS or container label;

(2) ~~The approximate range of quantity of the chemical usually stored at the facility~~ The maximum amount of the chemical stored at the facility at any time during a year, using the following ranges:

Class A, which shall include quantities of less than 55 gallons or 500 pounds;

Class B, which shall include quantities of between 55 gallons to 550 gallons, and quantities of between 500 pounds and 5,000 pounds; and

Class C, which shall include quantities of between 550 gallons and 5500 gallons, and quantities between 5,000 pounds and 50,000 pounds; and

Class D, which shall include quantities of greater than 5500 gallons or 50,000 pounds; and

(3) The area in the facility in which the hazardous chemical is normally stored and to what extent the chemical may be stored at altered temperature or pressure.

(b) The Hazardous Substance List shall be updated quarterly if necessary, but not less often than annually; however, if a chemical is deleted from, or added to, the Hazardous Substance List, or if the

quantity changes sufficiently to cause the chemical to be in a different class as defined in subsection (a) of this section, the employer shall update the Hazardous Substance List to reflect those changes as soon as practicable, but in any event within 30 days of such change.

(b1) In lieu of the information required by subdivisions (a)(1) through (a)(3), employers may substitute the information specified in section 312(d)(2) of the Superfund Amendments and Reauthorization Act of 1986, P.L. 99-499.

(c) The Hazardous Substance List may be prepared for the facility as a whole, or for each area in a facility where hazardous chemicals are stored, at the option of the employer but shall include only chemicals used or stored in North Carolina."

Sec. 4. G.S. 95-194(a) reads as rewritten:

"(a) An employer who normally stores at a facility any hazardous chemical in an amount of at least 55 gallons or 500 pounds, whichever is greater, shall provide the Fire Chief of the Fire Department having jurisdiction over the facility, in writing, (i) the name(s) and telephone number(s) of knowledgeable representative(s) of the employer who can be contacted for further information or in case of an emergency, ~~(ii) in municipalities with populations of less than 10,000 advise him of the availability of the Hazardous Substance List upon written request, and (iii) in municipalities with populations of 10,000 or more, and~~ (ii) a copy of the Hazardous Substance List."

Sec. 5. G.S. 95-194(b) reads as rewritten:

"(b) Each employer shall provide a copy of the Hazardous Substance List to the Fire Chief, ~~in accordance with the provisions of G.S. 95-194(a).~~ The employer shall notify the Fire Chief in writing of any updates that occur in the previously submitted Hazardous Substance List as provided in G.S. 95-191(b)."

Sec. 6. G.S. 95-194(f) reads as rewritten:

"(f) The Fire Chief shall, ~~in consultation with the employer,~~ make information from the Hazardous Substance List, the emergency response plan, and MSDS's available to members of the ~~Fire Company~~ Fire Department having jurisdiction over the facility and to personnel responsible for preplanning emergency response, police, medical or fire activities, but shall not otherwise distribute or disclose (or allow the disclosure of) information not available to the public under G.S. 95-208. Such persons receiving such information shall not disclose the information received and shall use such information only for the purpose of preplanning emergency response, police, medical or fire activities."

Sec. 7. G.S. 95-195 reads as rewritten:

"§ 95-195. *Complaints, investigations, penalties.*--(a) Complaints of violations of this Part shall be filed in writing with the Commissioner of Labor. Such complaints received in writing from any Fire Chief relating to alleged violations of this Part shall be investigated in a timely manner by the Commissioner of Labor or his designated representative.

(b) Duly designated representatives of the Commissioner of Labor, upon presentation of appropriate credentials to the employer, shall have the right of entry into any facility at reasonable times to inspect and investigate complaints within reasonable limits, and in a reasonable manner. Following the investigation, the Commissioner shall make appropriate findings. Either the employer or the person complaining of a violation may request an administrative hearing pursuant to Chapter 150B of the General Statutes. This request for an administrative hearing shall be submitted to the Commissioner of Labor within 14 days following the Commissioner making his findings. The Commissioner shall within 30 days of receiving the request hold an administrative hearing in accordance with Article 3 of Chapter 150B of the General Statutes.

~~(c) Employers found to be in violation of this Article shall be given 14 days following receipt of written notification of the violation to comply.~~ If the Commissioner of Labor finds that the employer violated this Article, the Commissioner shall order the employer to comply within 14 days following receipt of written notification of the violation. Employers not complying within 14 days following receipt of written notification of a violation shall be subject to civil penalties of not more than one thousand dollars (\$1,000) per violation imposed by the Commissioner of Labor, ~~after a hearing and an opportunity to be heard.~~ There shall be a separate offense for each day the violation continues.

(d) Any order by the Commissioner under subsection (b) or (c) of this section shall be subject to judicial review as provided under Article 4 of Chapter 150B of the General Statutes."

Sec. 8. G.S. 95-216 reads as rewritten:

"§ 95-216. *Exemptions.*--Notwithstanding any language to the contrary, the provisions of this Article shall not apply to chemicals in or on the following:

(1) Hazardous substances while being transported in interstate commerce into or through this State;

(2) Products intended for personal consumption by employees in the facilities;

(3) Retail food sale establishments and all other retail trade establishments in Standard Industrial Classification Codes 53 through 59, exclusive of processing and repair areas, except that the employer

must comply with the provisions of G.S. 95-194(a)(i);

(4) Any food, food additive, color additive, drug or cosmetic as such terms are defined in the Federal Food, Drug and Cosmetic Act (21 U.S.C. 301 et seq.);

(5) A laboratory under the direct supervision or guidance of a technically qualified individual provided that:

- a. Labels on containers of incoming chemicals shall not be removed or defaced;
- b. MSDS's received by the laboratory shall be maintained and made accessible to employees and students;
- c. The laboratory is not used primarily to produce hazardous chemicals in bulk for commercial purposes; and
- d. The laboratory ~~is an independent operation not affiliated with a manufacturing or nonmanufacturing facility and the operator complies with the provisions of G.S. 95-194(a) (i);~~

(6) Any farming operation which employs 10 or fewer full-time employees, except that if any hazardous chemical in an amount in excess of 55 gallons or 500 pounds, whichever is greater, is normally stored at the farming operation, the employer must comply with the provisions of G.S. 95-194(a) (i); and

(7) Any distilled spirits, tobacco, and untreated wood products; and

(8) Medicines used directly in patient care in health care facilities and health care facility laboratories ~~are exempt from this Article."~~

Sec. 9. G.S. 95-217 reads as rewritten:

"§ 95-217. Preemption of local regulations.--It is the intent of the General Assembly to prescribe this uniform system for the disclosure of information regarding the use or storage of hazardous chemicals. To that end, all units of local government in the State are preempted from exercising their powers to require disclosure, directly or indirectly, of information regarding the use or storage of hazardous chemicals by employers to any members of the public, or to any branch or agent of State or local government in any manner other than as provided for in this Article. This section does not preempt the enforcement of the provisions of any nationally recognized fire code that may be adopted by a unit of local government."

Sec. 10. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 26th day of June, 1987.

AN ACT TO REQUIRE A WATER OR SEWER UTILITY COMPANY TO POST A BOND.

The General Assembly of North Carolina enacts:

Section 1. G.S. 62-18(b) reads as rewritten:

"(b) ~~All~~ Except as provided in G.S. 62-110.3, all license fees and seal taxes, all money received from fines and penalties, and all other fees paid into the office of the Utilities Commission shall be turned in to the State treasury."

Sec. 2. A new section is added to Chapter 62 of the General Statutes to read:

"§ 62-110.3. *Bond required for water and sewer companies.*--(a) No franchise may be granted to any water or sewer utility company until the applicant furnishes a bond, secured with sufficient surety as approved by the Commission, in an amount not less than ten thousand dollars (\$10,000) nor more than two hundred thousand dollars (\$200,000). The bond shall be conditioned upon providing adequate and sufficient service within all the applicant's service areas, including those for which franchises have previously been granted, shall be payable to the Commission, and shall be in a form acceptable to the Commission. In setting the amount of a bond, the Commission shall consider:

- (1) whether the applicant holds other water or sewer franchises in this State, and if so its record of operation,
- (2) the number of customers the applicant now serves and proposes to serve,
- (3) the likelihood of future expansion needs of the service,
- (4) if the applicant is acquiring an existing company, the age of the equipment, and
- (5) any other relevant factors.

Any interest earned on a bond shall be payable to the water or sewer company that posted the bond.

(b) The Commission shall not require an applicant to post the bond required by subsection (a) if:

- (1) the applicant has posted a bond for the water or sewer system with another State government agency and the Commission finds that that bond satisfies the purposes of this section; or
- (2) the applicant has posted bonds for other water or sewer systems with the Commission totalling two hundred thousand dollars (\$200,000).

(c) The utility, the Public Staff, the Attorney General, and any other party may, at any time after the amount of a bond is set, apply to the Commission to raise or lower the amount based on changed circumstances.

(d) The appointment of an emergency operator, either by the superior court in accordance with G.S. 62-118(b) or by the Commission with the consent of the owner or operator, operates to forfeit the bond required by this section. The court or Commission, as appropriate, shall determine the amount of money needed to alleviate the emergency and shall order that amount of the bond to be paid to the Commission as trustee for the water or sewer system.

(e) If the person who operated the system before the emergency was declared desires to resume operation of the system upon a finding that the emergency no longer exists, the Commission shall require him to post a new bond, the amount of which may be different from the previous bond."

Sec. 3. This act is effective upon ratification and applies to all franchises granted by the Utilities Commission on and after that date.

In the General Assembly read three times and ratified this the 26th day of June, 1987.

H.B. 846

CHAPTER 491

AN ACT TO MAKE TECHNICAL CHANGES IN THE ELECTION LAWS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 163-140(b)(5) is amended by deleting "including solicitor for the solicitorial district in which the county is situated", and substituting "including district attorney for the prosecutorial district in which the county is situated".

Sec. 2. G.S. 163-192(a) reads as rewritten:

"(a) After Primary. At the conclusion of its canvass of the primary election, the State Board of Elections shall prepare separate abstracts of the votes cast:

- (1) For Governor and all State officers, justices of the Supreme Court, judges of the Court of Appeals, judges of the superior court, and United States Senators.
- (2) For members of the United States House of Representatives for the several congressional districts in the State.
- (3) For district court judges for the several judicial districts in the State.
- (4) For ~~solicitor~~ district attorney in the several ~~solicitorial~~ prosecutorial districts in the State.

- (5) For State Senators in the several senatorial districts in the State composed of more than one county.
- (6) For members of the State House of Representatives in the several representative districts in the State composed of more than one county.

Abstracts prepared by the State Board of Elections under this subsection shall state the total number of votes cast for each candidate of each political party for each of the various offices canvassed by the State Board of Elections. They shall also state the name or names of the person or persons whom the State Board of Elections shall ascertain and judicially determine by the count to be nominated for each office.

Abstracts prepared under this subsection shall be signed by the members of the State Board of Elections in their official capacity and shall have the great seal of the State affixed thereto."

Sec. 3. G.S. 163-192(b) reads as rewritten:

"(b) After General Election. At the conclusion of its canvass of the general election, the State Board of Elections shall prepare abstracts of the votes cast:

- (1) For President and Vice-President of the United States, when an election is held for those offices.
- (2) For Governor and all State officers, justices of the Supreme Court, judges of the Court of Appeals, judges of the superior court, and United States Senators.
- (3) For members of the United States House of Representatives for the several congressional districts in the State.
- (4) For district court judges for the several judicial districts in the State.
- (5) For ~~solicitor~~ district attorney in the several ~~solicitorial~~ prosecutorial districts in the State.
- (6) For State Senators in the several senatorial districts in the State composed of more than one county.
- (7) For members of the State House of Representatives in the several representative districts in the State composed of more than one county.
- (8) For and against any constitutional amendments or propositions submitted to the people.

Abstracts prepared by the State Board of Elections under this subsection shall state the names of all persons voted for, the office for which each received votes, and the number of legal ballots cast for each candidate for each office canvassed by the State Board of Elections. They shall also state the name or names of the person or persons whom the State Board of Elections shall ascertain and

judicially determine by the count to be elected to each office.

Abstracts prepared under this subsection shall be signed by the members of the State Board of Elections in their official capacity and shall have the great seal of the State affixed thereto."

Sec. 4. The first sentence of G.S. 163-175 is amended by deleting "at the county courthouse", and substituting "at the county courthouse or at the office of the county board of elections (the choice of location to be at the option of the county board of elections)".

Sec. 4.1. The sixth paragraph of G.S. 163-41 (a) is amended by deleting "three registered voters", and substituting "two registered voters". That paragraph is further amended by adding the following at the end: "Provided that if only one name is submitted by the fifth day preceding the date on which appointments are to be made, by a party for judge of election by the chairman of one of the two political parties in the county having the greatest numbers of registered voters in the State, the county board of elections must appoint that person."

Sec. 5. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 26th day of June, 1987.

H.B. 1046

CHAPTER 492

AN ACT TO ALLOW THE STATE BOARD OF EXAMINERS FOR NURSING HOME ADMINISTRATORS TO SUBSTITUTE COMPARABLE PROFESSIONAL EXPERIENCE FOR THE REQUIREMENT OF AN INTERNSHIP AS AN ADMINISTRATOR-IN-TRAINING.

The General Assembly of North Carolina enacts:

Section 1. G.S. 90-278(1)d. is amended by inserting between the word "Board" and the semicolon following that word the phrase "or has professional experience the Board declares is comparable to a period of training as an administrator".

Sec. 2. Notwithstanding G.S. 150B-13, the State Board of Examiners for Nursing Home Administrators may, until six months from the effective date of this act, adopt temporary rules to implement this act without prior notice or hearing or upon any abbreviated notice or hearing the Board finds practicable. The Board shall begin normal rule-making procedures on permanent rules in accordance with Article 2 of Chapter 150B of the General Statutes at the same time it adopts a temporary rule. Temporary rules adopted under this section shall be published in the *North Carolina Register* and shall be effective for a

period of not longer than 180 days.

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 26th day of June, 1987.

H.B. 1198

CHAPTER 493

AN ACT TO ELIMINATE THE REQUIREMENT THAT A
NOTICE OF SALE DESCRIBE IMPROVEMENTS ON THE
PROPERTY.

The General Assembly of North Carolina enacts:

Section 1. G.S. 45-21.16A(3) reads as rewritten:

"(3) Describe the real property ~~(including improvements thereon)~~ to be sold in such a manner as is reasonably calculated to inform the public as to what is being sold, which description may be in general terms and incorporate the description as used in the instrument containing the power of sale by reference thereto. Any property described in the instrument containing the power of sale which is not being offered for sale should also be described in such a manner as to enable prospective purchasers to determine what is and what is not being offered for sale."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 26th day of June, 1987.

S.B. 260

CHAPTER 494

AN ACT TO REQUIRE GENERAL ASSEMBLY REVIEW OF ALL
CHANGES IN SPECIAL USE AIRSPACES IN THE AIRSPACE
OVER NORTH CAROLINA.

The General Assembly of North Carolina enacts:

Section 1. Chapter 63 of the General Statutes is amended by adding a new Article to read:

"Article 9.

"Changes in Special Use Airspaces.

"§ 63-90. *Public purpose declared.*--It is the intent of the General Assembly that the legislative branch review and comment on all applications and actions of the Federal Aviation Administration concerning the creation of or changes in special use airspaces for aircraft operation over North Carolina.

"§ 63-91. *General Assembly review and approval.*--The Division of Aviation of the Department of Transportation shall bring before the General Assembly or the Joint Legislative Commission on Governmental Operations all applications to the Federal Aviation Administration and all proposed rule changes by the Federal Aviation Administration for the creation of or changes in special use airspaces, including military operation areas and restricted areas for aircraft operation over North Carolina during the period for public comment. If the General Assembly is in session during that period, information on the pending application or rule change shall be presented to the standing Transportation Committees of the House of Representatives and the Senate. If the comment period occurs when the General Assembly is not in session then the Division of Aviation of the Department of Transportation shall bring the relevant information before the Joint Legislative Commission on Governmental Operations. The General Assembly or the Joint Legislative Commission on Governmental Operations will then review and comment on those applications.

"§ 63-92. *Effect of General Assembly review.*--(a) If the General Assembly or the Joint Legislative Commission on Governmental Operations determines that the proposed change is in the best interests of the citizens of this State, then the Division of Aviation of the Department of Transportation shall notify the Federal Aviation Administration of the General Assembly's official position on the pending application or rule change when it submits the State's official position on the pending application or rule change.

(b) If the General Assembly or the Joint Legislative Commission on Governmental Operations determines that the proposed change is not in the best interests of the citizens of this State, then the Division of Aviation of the Department of Transportation shall notify the Federal Aviation Administration of the General Assembly's official position opposing the pending application or rule change when it submits the State's official position on the pending application or rule change."

Sec. 2. This act is effective upon ratification and applies to pending changes in ceilings.

In the General Assembly read three times and ratified this the 29th day of June, 1987.

S.B. 345

CHAPTER 495

AN ACT TO CLARIFY THE EMERGENCY MEDICAL
TECHNICIAN CERTIFICATION PROCESS FOR OUT-OF-
STATE APPLICANTS.*The General Assembly of North Carolina enacts:*

Section 1. Chapter 951 of the 1985 Session Laws, Regular Session 1986, is repealed.

Sec. 2. G.S. 131E-159 is amended by inserting a new subsection (b1) to read:

"(b1) An individual currently certified as an emergency medical technician by the National Registry of Emergency Medical Technicians or by another state where the training/certification requirements have been approved for reciprocity by the Department of Human Resources, in accordance with rules promulgated by the Medical Care Commission, and who is either currently residing in North Carolina or affiliated with a permitted ambulance provider offering service within North Carolina, may be eligible for certification as an emergency medical technician without examination. This certification shall be valid for a period not to exceed the length of the applicant's original certification or two years, whichever is less."

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 29th day of June, 1987.

S.B. 389

CHAPTER 496

AN ACT TO AUTHORIZE THE REGULATION OF THE
OPERATION OF WATER WELLS AND WELL SYSTEMS
WITH A DESIGNED CAPACITY OF 100,000 GALLONS PER
DAY OR GREATER BY BRINGING THE OPERATION OF
SUCH WELLS WITHIN THE PURVIEW OF THE WELL
CONSTRUCTION ACT.

Whereas, the regulation of high capacity wells, water wells or well systems with a designed capacity of 100,000 gallons per day or greater, is necessary to prevent the contamination of potable groundwaters by the improper operation of wells in close proximity to pollution sources; Now, therefore,

The General Assembly of North Carolina enacts:

Section 1. G.S. 87-85 is amended by adding a subdivision after subdivision (16) to read:

"(17) 'Operation of wells' means the process, frequency, and duration of withdrawing water or other fluids from a well by any means."

Sec. 2. G.S. 87-86 is amended by adding "operate," after "construct," and before "repair,".

Sec. 3. G.S. 87-86 is amended by adding "operated," after "constructed," and before "repaired,".

Sec. 4. G.S. 87-87 is amended by adding "the operation of water wells or well systems with a designed capacity of 100,000 gallons per day or greater," after "abandonment of wells," in the first sentence.

Sec. 5. G.S. 87-88(c) is amended by adding after the first sentence "Wells subject to the provisions of subdivision (a)(i) of this section shall be operated in such a way that they shall not cause the violation of applicable groundwater quality standards."

Sec. 6. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 29th day of June, 1987.

S.B. 403

CHAPTER 497

AN ACT TO PROVIDE FOR THE CANCELLATION OF A MONEY JUDGMENT BY THE CLERK OF COURT UPON FULL PAYMENT BY THE DEBTOR AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION AND THE CONFERENCE OF CLERKS OF SUPERIOR COURT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 1-239(a) is hereby rewritten to read as follows:

"(a) Payment of money judgment to clerk's office.

- (1) The party against whom a judgment for the payment of money is rendered by any court of record may pay the whole, or any part thereof, in cash or by check, to the clerk of the court in which the same was rendered, although no execution has issued on such judgment.
- (2) The clerk shall give the party a receipt showing the date and amount of the payment and identifying the judgment, and shall note receipt of the payment on the judgment docket of the court. If the payment is made by check and the check is not finally paid by the drawee bank, the clerk shall cancel the notation of receipt and return the check to the party who tendered it.

- (3) When a payment to the clerk is made in cash or when a check is finally paid by the drawee bank, the clerk shall give the notice provided for in subsection (b). When the full amount of a judgment has been so paid, the clerk shall include the words 'JUDGMENT PAID IN FULL' in the notice.
- (4) When a judgment has been paid in part, but not in full, the clerk shall furnish a certificate of partial payment to the clerk of superior court of any county to which a transcript of a judgment has been sent, but only upon the request of that clerk or of the party who made the partial payment.
- (5) When a judgment has been paid in full, and the party in whose favor the judgment was rendered has collected all payments made to the clerk, or when ten days have passed since notice of payment in full was sent pursuant to subsection (b) and the party has neither collected all payments made to the clerk nor notified the clerk that the party disputes payment of the full amount of the judgment, then the clerk shall immediately:
 - (i) mark 'PAID AND SATISFIED IN FULL' on the judgment docket, and
 - (ii) forward a certificate of payment in full to the clerk of superior court in each county to which a transcript of the judgment has been sent.
- (6) If the party in whose favor a judgment has been rendered notifies the clerk that the party disputes payment in full of the judgment, the clerk shall proceed as provided in G.S. 1-242.
- (7) Entries of payment or satisfaction on the judgment dockets in the office of the clerk of the superior court by any person other than the clerk shall be made in the presence of the clerk or his deputy, who shall witness the same."

Sec. 2. This act shall become effective October 1, 1987.

In the General Assembly read three times and ratified this the 29th day of June, 1987.

S.B. 471

CHAPTER 498

AN ACT TO LIMIT THE LIABILITY OF LANDOWNERS TO PERSONS USING THEIR LAND IN CONNECTION WITH THE TRAILS SYSTEM.

The General Assembly of North Carolina enacts:

Section 1. Article 6 of Chapter 113A is amended by adding a new section at the end to read:

" § 113A-95. *Liability to users of the Trails System.*--An owner, lessee, occupant, or other person in control of land who allows without compensation another person to hike or use the land for recreational purposes as established under this Article owes the person the same duty of care he owes a trespasser."

Sec. 2. This act shall become effective October 1, 1987.

In the General Assembly read three times and ratified this the 29th day of June, 1987.

S.B. 636

CHAPTER 499

AN ACT TO PERMIT NASH COUNTY TO APPROPRIATE
ADDITIONAL FUNDS FOR INDUSTRIAL DEVELOPMENT.

The General Assembly of North Carolina enacts:

Section 1. Section 1 of Chapter 368 of the 1957 Session Laws, as amended by Chapter 896 of the 1973 Session Laws, Chapter 125 of the 1979 Session Laws, Chapter 40 of the 1981 Session Laws, and Chapter 339 of the 1983 Session Laws, is further amended by deleting the phrase "one hundred thousand dollars (\$100,000)" and substituting the phrase "one hundred fifty thousand dollars (\$150,000)".

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 29th day of June, 1987.

S.B. 682

CHAPTER 500

AN ACT TO INCREASE THE MAXIMUM FEE THE BOARD OF
EXAMINERS IN PSYCHOLOGY MAY REQUIRE FOR
EXAMINATIONS UNDER THE PRACTICING
PSYCHOLOGISTS' LICENSING ACT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 90-270.11 reads as rewritten:

" § 90-270.11. *Licensing and examination.*--(a) Practicing Psychologist.

- (1) The Board shall issue a license to practice psychology to any applicant who pays an application fee of fifty dollars (\$50.00) and an additional examination fee of not more than ~~one hundred fifty dollars (\$150.00)~~ two hundred dollars (\$200.00), who passes a satisfactory examination in psychology, and who submits evidence verified by oath and satisfactory to the Board that he:

- a. Is at least 18 years of age;
 - b. Is of good moral character;
 - c. Has received his doctoral degree based on a planned and directed program of studies, the content of which was psychological in nature, from an accredited educational institution; and subsequent to receiving his doctoral degree has had at least two years of acceptable and appropriate supervised experience germane to his area of practice as a psychologist;
 - d. Has not within the preceding six months failed an examination given by the Board.
 - (2) In order for a psychological associate to be upgraded to a practicing psychologist, the applicant must comply with the requirements set forth in subdivision (1) hereof; ~~however, a not more than one hundred fifty dollars (\$150.00) examination fee only shall be required and shall pay an examination fee of not more than two hundred dollars (\$200.00).~~
- (b) Psychological Associate.
- (1) The Board shall issue a license to practice psychology to any applicant who pays an application fee of fifty dollars (\$50.00) and an additional examination fee of not more than ~~one hundred fifty dollars (\$150.00)~~ two hundred dollars (\$200.00), who passes a satisfactory examination in psychology, and who submits evidence verified by oath and satisfactory to the Board that he:
 - a. Is at least 18 years of age;
 - b. Is of good moral character;
 - c. Has received a master's degree in psychology from an accredited educational institution;
 - d. Has not within the preceding six months failed an examination given by the Board.
 - (2) The Board shall not prescribe any educational requirements other than ~~the a~~ a master's degree in psychology required by this subsection for the initial license issued under this section, but may impose continuing education requirements for renewals of the license.
- (c) Examinations. The examinations required by subsections (a) and (b) of this section shall be of a form and content prescribed by the Board, and may be oral, written, or both. The examinations shall be administered annually; or more frequently as the Board may prescribe, at a time and place to be determined by the Board."

Sec. 2. Subdivision (2) of G.S. 90-270.14 is amended by deleting the word "recommendations" and substituting in its place the word "requirements".

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 29th day of June, 1987.

S.B. 824

CHAPTER 501**AN ACT DIRECTING A STUDY OF THE WATER QUALITY ACT OF 1987 TO DETERMINE STATE COMPATIBILITY.**

The General Assembly of North Carolina enacts:

Section 1. The Department of Natural Resources and Community Development shall review the Water Quality Act of 1987, Pub. L. No. 100-4, 101 Stat. 7 (1987) and determine the extent to which current State law is compatible therewith. The Department shall report its findings and recommendations to the House Committee on Natural and Economic Resources, the House Committee on Water and Air Resources, the Senate Committee on the Environment, the Senate Committee on Natural and Economic Resources and Wildlife, and the General Research Division. The Department shall submit a preliminary report by January 15, 1988, and shall submit its final report no later than two weeks prior to the date set for the 1987 General Assembly to reconvene for the 1988 Regular Session. Notwithstanding any rule of the General Assembly to the contrary, legislation implementing the recommendations of the report may be introduced and considered during the 1988 Regular Session.

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 29th day of June, 1987.

S.B. 840

CHAPTER 502**ACT TO PROVIDE FOR INCREASED INVOLVEMENT IN WATER TESTING AND ANALYSIS BY PRIVATE COMMERCIAL LABORATORIES.**

The General Assembly of North Carolina enacts:

Section 1. The Department of Human Resources shall meet with representatives of private commercial water laboratories in North Carolina to conduct a study of (1) ways and means by which the State can assure maximum utilization of private enterprise for laboratory services; (2) whether additional safeguards are needed to assure fair

and equitable competition between the State Laboratory of Public Health and commercial water laboratories in North Carolina; and (3) whether the certification of private laboratories should be revised to assure higher standards among private laboratories.

Sec. 2. The Department of Human Resources and representatives of private commercial water laboratories in North Carolina are directed to report their findings, together with any recommended legislation, to the 1988 Session of the General Assembly.

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 29th day of June, 1987.

H.B. 52

CHAPTER 503**AN ACT TO CONVERT EDGECOMBE, NASH, RICHMOND AND CLEVELAND TECHNICAL COLLEGES TO COMMUNITY COLLEGES.**

The General Assembly of North Carolina enacts:

Section 1. Edgecombe Technical College is converted from a technical college to a community college.

Sec. 2. Nash Technical College is converted from a technical college to a community college.

Sec. 3. Richmond Technical College is converted from a technical college to a community college.

Sec. 4. Cleveland Technical College is converted from a technical college to a community college.

Sec. 5. The State Board of Community Colleges may not make any special allotment of funds for the 1987-88 fiscal year to carry out the conversions mandated by this act.

Sec. 6. This act shall become effective July 1, 1987.

In the General Assembly read three times and ratified this the 29th day of June, 1987.

H.B. 139

CHAPTER 504**AN ACT TO PROVIDE THAT IN PREPARATION OF THE GENERAL ELECTION BALLOT, THE STATE BOARD OF ELECTIONS MAY NOT DIVIDE THE APPELLATE DIVISION INTO MORE THAN ONE BALLOT, AND MAY NOT DIVIDE THE SUPERIOR COURT INTO MORE THAN ONE BALLOT.**

The General Assembly of North Carolina enacts:

Section 1. G.S. 163-140(a) is amended by adding the following at the end:

"If the State Board of Elections divides the State ballot into two or more ballots, all candidates for superior court shall appear on the same ballot except that the State Board of Elections may divide the election of superior court judges into two ballots either because of length of the ballot or to provide a separate ballot for multi-seat races but only superior court judges shall be on those ballots, and all candidates for the Appellate Division shall appear on the same ballot."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 29th day of June, 1987.

H.B. 152

CHAPTER 505

AN ACT TO PROVIDE QUALIFIED IMMUNITY FROM CIVIL LIABILITY IN TORT FOR VOLUNTEERS OF NONPROFIT CHARITABLE ORGANIZATIONS.

The General Assembly of North Carolina enacts:

Section 1. Article 43B of Chapter 1 of the General Statutes is amended as follows:

(1) By rewriting the catch line of that Article to read:

"Defense of Charitable Immunity Abolished; and Qualified Immunity for Volunteers."; and

(2) By adding two new sections to read:

" § 1-539.10. *Immunity from civil liability for volunteers.*--(a) A volunteer who performs services for a charitable organization is not liable in civil damages for any acts or omissions resulting in any injury, death, or loss to person or property arising from the volunteer services rendered if:

- (1) The volunteer was acting in good faith and the services rendered were reasonable under the circumstances; and
- (2) The acts or omissions do not amount to gross negligence, wanton conduct, or intentional wrongdoing.
- (3) The acts or omissions did not occur while the volunteer was operating or responsible for the operation of a motor vehicle.

(b) To the extent that any charitable organization or volunteer has liability insurance, that charitable organization or volunteer shall be deemed to have waived the qualified immunity herein to the extent of indemnification by insurance for the negligence by any volunteer.

(c) Nothing herein shall be construed to alter the standard of care requirement or liability of persons rendering professional services.

"§ 1-539.11. *Definitions.*--As used in this Article:

- (1) 'Charitable Organization' means an organization that has humane and philanthropic objectives, whose activities benefit humanity or a significant rather than limited segment of the community without expectation of pecuniary profit or reward and is exempt from taxation under either G.S. 105-130.11(a)(3) or G.S. 105-130.11(a)(5) or Section 501(c)(3) of the Internal Revenue Code of 1954.
- (2) 'Volunteer' means an individual, serving as a direct service volunteer performing services for a charitable, nonprofit organization, who does not receive compensation, or anything of value in lieu of compensation, for the services, other than reimbursement for expenses actually incurred."

Sec. 2. This act is effective upon ratification, and shall apply only to causes of action arising after that date.

In the General Assembly read three times and ratified this the 29th day of June, 1987.

H.B. 509

CHAPTER 506

AN ACT TO REVISE AND REWRITE CHAPTER 926, 1947 SESSION LAWS, AS AMENDED, PERTAINING TO THE CHARLOTTE FIREMEN'S RETIREMENT SYSTEM.

The General Assembly of North Carolina enacts:

Section 1. Chapter 926, 1947 Session Laws, as amended, is rewritten to read:

"TITLE I. PREFACE.

Section 1. *Introduction.* The Charlotte Firemen's Retirement System heretofore established pursuant to the provisions of Chapter 926 of the 1947 Session Laws, as amended, is hereby continued and shall hereafter be known as the Charlotte Firefighters' Retirement System. The purpose of the Charlotte Firefighters' Retirement System shall be to provide retirement, disability and survivor benefits for the uniformed employees of the Charlotte Fire Department who are entitled thereto under the provisions of this act. This act shall be officially known and may be referred to as the Charlotte Firefighters' Retirement System Act.

Sec. 2. *Definitions.* The following words and phrases as used in this act shall have the indicated meanings unless a different meaning is clearly required by the context.

(1) 'Accrued Benefit' means the amount of monthly retirement benefits earned by a Member computed, as of any date, on his Final Average Salary and Membership Service Credit as of such date. In no event shall the Accrued Benefit be less than the Accrued Benefit as of June 30, 1986.

(2) 'Actuarial Equivalent' means a benefit payable by the System that is determined by the Actuary to be equal to the basic benefit provided by the System based on the interest rate and the mortality and other tables and assumptions adopted for such purposes by the Board of Trustees. In no event shall any Actuarial Equivalent be less than the corresponding Actuarial Equivalent as of June 30, 1987, based on the Accrued Benefit and the assumptions in effect on that date.

(3) 'Actuarial Valuation' or 'Valuation' means a determination of the normal costs, actuarial accrued liability, actuarial value of assets and related actuarial present values of the System performed by an Actuary which are based on the characteristics of the System. Such characteristics include, but are not limited to, age, service, salaries, and rate of turnover by death, disability, termination or retirement.

(4) 'Armed Forces' means the Armed Forces of the United States of America.

(5) 'Audit' means an examination of the accounting records of the System performed by a certified public accountant or certified public accounting firm. Such examination is to determine if said records are properly maintained and to make recommendations and suggestions for better record-keeping and management.

(6) 'Beneficiary', 'Designated Beneficiary', or 'Surviving Beneficiary' means any person, or persons, who is in receipt of, or who is designated in writing to receive, a retirement benefit or other benefit as provided in this act.

(7) 'Board of Trustees', 'Board' or 'Trustee' means the Board of Trustees of the Charlotte Firefighters' Retirement System, as specified in Section 6.03, or any individual member thereof.

(8) 'City' means the City of Charlotte.

(9) 'Compensation' means the remuneration earned by a Member for services performed as an employee of the Charlotte Fire Department and for which contributions are made to the System. Compensation shall include regular wages, longevity pay, overtime (hire-back) pay, bonus payments, funeral leave, jury duty, used vacation pay, used sick leave, paid military reserve duty (paid by

City), used compensatory and court time, and used holiday pay. Compensation also includes any amounts for which contributions are made by a Member to receive Membership Service Credit for any period(s) of workers' compensation and/or accident and sickness benefits. Compensation does not include terminal payments for unused sick leave, unused vacation pay, unused compensatory and court time, and/or unused holiday pay. Also, Compensation does not include worker's compensation payments and/or supplemental payments from the City, accident and sickness benefits, reimbursement for scheduled and/or unscheduled mileage, and/or remuneration from the City for services performed outside his employment with the Charlotte Fire Department. For the purpose of calculating a Member's Final Average Salary, any lump sum payments for which contributions were made to the System, such as longevity pay and bonus payments, and received by said Member within two consecutive years of Membership Service shall be apportioned over the previous Membership Service for which the payment(s) was earned.

(10) 'Effective Date' of this amended and restated act means July 1, 1987, unless otherwise specified herein.

(11) 'Final Average Salary' means the monthly average Compensation received by a Member any two consecutive years of Membership Service which produces the highest average and is contained within the Member's last five years of Membership Service. If a Member has less than two years of Membership Service, his Final Average Salary shall mean the monthly average Compensation for his total Membership Service.

(12) 'He', 'Him', 'His', and any other pronouns and terms shall be used when referring to both male and female Members and/or Beneficiaries of this System, and vice versa.

(13) 'Investment Fiduciary' means any person, or persons, who exercises any discretionary authority or control in the investment of the System's assets and/or renders investment advice for a fee to the System.

(14) 'Majority Vote' means that number of votes which is more than fifty percent (50%) of the System Members casting ballots.

(15) 'Member' means a uniformed employee of the Charlotte Fire Department.

(16) 'Membership Service Credit' or 'Membership Service' means the amount of service credited to a Member as provided in this act to determine what, if any, benefits are due him.

(17) 'Participant' means any Member, Retiree, Beneficiary in receipt of benefits or a former Member with a deferred Accrued Benefit.

(18) 'Retiree' means any person who retires with a retirement benefit payable by the System.

(19) 'Retirement System' or 'System' means the Charlotte Firefighters' Retirement System.

(20) 'Total Contributions' means the sum of the amounts paid by or on behalf of a Member and credited to his individual account by the System.

(21) 'Year' or 'Plan Year' means the twelve months from July 1st through June 30th.

"TITLE II. MEMBERSHIP SERVICE CREDIT.

Sec. 3. *General.* A Member of this Retirement System shall receive Membership Service Credit for all periods of employment with the Charlotte Fire Department for which contributions have been paid to, and not subsequently refunded by, the Charlotte Firefighters' Retirement System. In no case shall more than one year of Membership Service Credit be credited a Member for any 12 calendar month period of time. Membership Service Credit shall not be credited a Member after said Member attains age 70 years.

Sec. 4. *Periods of Worker's Compensation & Accident and Sickness Benefits.* Membership Service Credit shall be credited to a Member for any periods of workers' compensation and/or accident and sickness benefits for which said Member contributes to the Charlotte Firefighters' Retirement System an amount equal to the Compensation the Member would have earned multiplied by the sum of the then current social security contribution rate and five percent (5%). Such contributions must be made within a 12 calendar month period from and after the date the Member returns to employment with the Charlotte Fire Department and prior to the Member's termination of membership or retirement.

Sec. 5. *Reinstatement of Membership Service Credit Previously Forfeited.* Membership Service Credit shall be credited for previous Membership Service for a Member who is reemployed by the Charlotte Fire Department within five years of the termination date of his previous employment, and provided the Member has not received reimbursement of his Total Contributions pursuant to the provisions of this act. Any Member who is reemployed by the Charlotte Fire Department on or before December 31, 1958, shall receive Membership Service Credit for all previous membership employment in said department. Any Member who was reemployed by the Charlotte Fire Department after December 31, 1958, and has previously received reimbursement of his Total Contributions pursuant to the provisions of this act, shall receive no Membership Service

Credit for any previous membership employment with the Charlotte Fire Department.

Sec. 6. *Return from Active Military Duty.* Membership Service Credit shall be credited to any Member who entered the Armed Forces of the United States of America during World War I, World War II, the Korean War, any period of national emergency conditions, or entered the Armed Forces at any time through the operation of the compulsory military service law of the United States of America, upon the return to membership employment with the Charlotte Fire Department. Such Membership Service Credit shall include the period of active military service and any period after discharge or release from active duty from the Armed Forces for which his reemployment rights are guaranteed by law unless otherwise specified in this act.

Sec. 7. *Purchase of Active Military Duty.* Membership Service Credit may be purchased for credit upon the completion of ten or more years of Membership Service Credit, prior to termination of membership or retirement, by any Member who served on active duty in the Armed Forces of the United States of America prior to his employment with the Charlotte Fire Department. The amount of Membership Service Credit to be credited to a Member will be equal to the actual active military duty by the Member not to exceed five years and shall be credited upon the payment of the required contributions as determined by the Administrator. The required contributions shall be an amount equal to the annualized Compensation rate the Member earned when he first entered membership in the Retirement System, multiplied by the sum of the Member and the City of Charlotte contribution rates in effect at the time when he first entered membership in the Retirement System, increased by five percent (5%) compounded per annum from the date of membership to the date of the payment of the required contributions and multiplied by the number of years and days of Membership Service to be credited.

Sec. 8. *Accumulated Sick Leave and Vacation at Retirement.* Membership Service Credit shall be credited to a Member for the balance of any unpaid sick leave and/or unpaid vacation at the time of his retirement, excluding any sick leave and/or vacation that was converted to a qualified deferred compensation program as defined by the City. Such Membership Service Credit shall be determined by the Administrator and shall be proportional based on the normal work schedule of the Member. Such Membership Service Credit cannot be used to meet the minimum qualifications for a disability retirement benefit, vested benefit or early retirement benefit, but may be used to

meet the minimum qualifications for a service retirement benefit.

Sec. 9. *Determination by Board of Trustees.* In any case of doubt as to the period of Membership Service Credit to be so credited any Member, the Board of Trustees shall have final power to determine such period.

"TITLE III. TERMINATION OF MEMBERSHIP.

Sec. 10. *Members With Less Than Ten Years of Membership Service Credit.* (a) If a Member with less than ten years of Membership Service Credit with this Retirement System shall cease employment with the Charlotte Fire Department, whether voluntary or involuntary, said former Member shall thereupon cease membership and shall be entitled to reimbursement of the Total Contributions made by or on his behalf to the Retirement System, excluding any contributions made on the former Member's behalf by the City of Charlotte under the provisions of Section 25 of this act without interest. A former Member desiring reimbursement of said contributions must complete and file the form 'Application for Refund of Accumulated Contributions' with the Administrator within five years of the termination date of his employment. Should a former Member fail to complete and file said form with the Administrator within such five years, the Former Members shall receive reimbursement of said contributions.

(b) If such a former Member dies within five years after terminating his employment prior to receiving reimbursement of contributions pursuant to subsection (a) of this section, his Designated Beneficiary(s) on file with the Retirement System or his personal representative in the absence of any Designated Beneficiary, may apply for reimbursement of contributions pursuant to subsection (a) of this section and must file such application with the Administrator within five years of the date of death of the former Member or the funds will be paid to the Designated Beneficiary, if living, or otherwise to the former Member's estate.

Sec. 11. *Members With Ten or More Years of Membership Service Credit.* (a) Effective July 1, 1986, if a Member with ten or more years of Membership Service Credit with this Retirement System shall cease employment with the Charlotte Fire Department, whether voluntary or involuntary, said Member shall receive his Accrued Benefit and defer such benefit until the Participant reaches age 60 years. The Accrued Benefit shall be calculated pursuant to the provisions of Sections 15 and 17 of this act in effect on the last day of work by said Participant. If such Participant dies before applying for his deferred benefits and attaining age 60 years, reimbursement of the Participant's contributions may be accomplished in the same manner

and in all respects as Section 10 of this act.

(b) As an alternative to the provisions of subsection (a) of this section, if a Member with ten or more years of Membership Service Credit with this Retirement System shall cease employment with the Charlotte Fire Department, whether voluntary or involuntary, said Member shall thereupon cease membership and may elect to receive reimbursement of his contributions in the same manner and in all respects as in Section 10 of this act.

Sec. 12. *Failure to Return From Active Military Duty.* Should any Member of this Retirement System who entered the Armed Forces of the United States of America pursuant to the provisions of Section 6 of this act fail to return to employment with the Charlotte Fire Department within the period for which his reemployment rights are guaranteed by law, said Member shall thereupon cease membership and shall be entitled to a deferred benefit or reimbursement of his contributions in the same manner and in all respects as in Section 10 or 11 of this act, whichever is applicable.

Such former member shall not receive Membership Service Credit for the period of active military duty or any period after discharge or release from active duty from the Armed Forces for which his reemployment rights had been guaranteed by law.

Sec. 13. *Member Attaining Age 70 Years.* A Member, upon the attainment of age 70 years, shall thereupon cease membership in the Charlotte Firefighters' Retirement System.

Sec. 14. *Retirement of Member.* Upon his retirement pursuant to the provisions of this act, a Member shall thereupon cease membership in the Charlotte Firefighters' Retirement System

"TITLE IV. BENEFITS.

Sec. 15. *Service Retirement.* A Member may upon written application through the Administrator to the Board of Trustees set forth an effective date of not less than 30 days nor more than 90 days subsequent to the execution and filing thereof that he desires to be retired, provided that he has attained the age and acquired the required Membership Service Credit and has been approved by the Board:

(1) The age and Membership Service Credit requirements for service retirement are as follows:

- a. Any age and 30 or more years of Membership Service Credit;
- b. Age 50 years or older and 25 or more, but less than 30 years of Membership Service Credit; or

c. Effective July 1, 1986, age 60 years or older and 10 or more years of Membership Service Credit.

(2) Upon a Member's service retirement, he shall be paid a benefit as provided in Section 17 of this act.

Sec. 16. *Compulsory Retirement.* A Member shall be retired upon attaining age 70 years and shall be paid a benefit as provided in Section 17.

Sec. 17. *Computation of Benefits.* (a) Upon retirement pursuant to the provisions of Sections 15 or 16, a Member shall receive a monthly benefit equal to two and four-tenths percent (2.4%) of his Final Average Salary multiplied by his Membership Service Credit, not to exceed one hundred percent (100%) of Final Average Salary, but not less than five hundred dollars (\$500.00) per month. The benefit payable pursuant to this subsection shall be referred to as the basic benefit. The effective date of this subsection is July 1, 1986.

(b) Prior to his retirement, but not thereafter, a Member may elect to receive an Actuarial Equivalent, computed as of the effective date of his retirement, of his basic benefit from subsection (a) of this section in a reduced monthly amount payable throughout his life, and nominate a Beneficiary in accordance with the provisions of option 1, 2, 3, 4, 5 or 6 as set forth below. Actuarial Equivalent for all Members retiring prior to July 1, 1987, shall be computed in accordance with the Group Annuity Table for 1951 with interest at four percent (4%). Actuarial Equivalent for all Members retiring on or after July 1, 1987, shall be computed in accordance with the Unisex Mortality Table for 1984 with interest at six percent (6%). If a Member does not have an option election in force at the time of his retirement, his monthly benefit shall be paid as the basic benefit.

(c) Option 1. Benefit for 10 Years Certain and Life Thereafter. A Retiree shall receive a reduced basic benefit payable monthly throughout his life with the provision that if he dies before he has received 120 monthly payments, the payments will continue for the remainder of the 120-month period to such Beneficiary, if living, as the Retiree shall have nominated by written designation duly executed and filed with the Board of Trustees.

(d) Option 2. 100% Joint and Survivor Benefit. A Retiree shall receive a reduced basic benefit payable monthly throughout his life and upon his death his reduced monthly benefit shall continue throughout the life of such Beneficiary, if living, as the Retiree shall have nominated by written designation duly executed and filed with the Board of Trustees.

(e) Option 3. 75% Joint and Survivor Benefit. A Retiree shall receive a reduced basic benefit payable monthly throughout his life and upon his death seventy-five percent (75%) of his reduced monthly benefit shall continue throughout the life of such Beneficiary, if living, as the Retiree shall have nominated by written designation duly executed and filed with the Board of Trustees.

(f) Option 4. 66 $\frac{2}{3}$ % Joint and Survivor Benefit. A Retiree shall receive a reduced basic benefit payable monthly throughout his life and upon his death sixty-six and two-thirds percent (66 $\frac{2}{3}$ %) of his reduced monthly benefit shall continue throughout the life of such Beneficiary, if living, as the Retiree shall have nominated by written designation duly executed and filed with the Board of Trustees.

(g) Option 5. 50% Joint and Survivor Benefit. A Retiree shall receive a reduced basic benefit payable monthly throughout his life and upon his death fifty percent (50%) of his reduced monthly benefit shall continue throughout the life of such Beneficiary, if living, as the Retiree shall have nominated by written designation duly executed and filed with the Board of Trustees.

(h) Option 6. A Retiree may elect any of Options 2 through 5 with the added provision that in the event the Designated Beneficiary predeceases the Retiree, the monthly benefit payable to the Retiree after the Beneficiary's death shall be equal to the basic benefit.

(i) In the event that a Retiree who named his spouse as Beneficiary in accordance with the provisions of this subsection and shall subsequently become divorced from the named Beneficiary, the Retiree may then elect a life annuity which shall be the Actuarial Equivalent of the value of all future benefit payments under the option then in effect upon written request to the Board of Trustees provided such request is not inconsistent with the terms of the divorce decree. It is the Retiree's responsibility to provide all pertinent documentation.

Sec. 18. *Early Retirement.* A Member may upon written application through the Administrator to the Board of Trustees set forth an effective date of not less than 30 days nor more than 90 days subsequent to the execution and filing thereof that he desires to be retired, provided that he has acquired 25 or more, but less than 30 years of Membership Service Credit and is less than age 50 years. Upon a Member's early retirement, he shall receive a benefit as provided in Section 17, except such benefit shall be reduced by twenty-five one-hundredths of one percent (.25%) for each whole month the early retirement date precedes the Member's attainment of age 50 years.

Sec. 19. *Disability Retirement in the Line of Duty.* (a) A Member whom the Board of Trustees finds to be totally and permanently disabled or incapacitated for duty in the employ of the Charlotte Fire Department by reason of an injury, accident or occupational disease arising out of and in the course of his actual performance of duty in his employment with the Charlotte Fire Department, may be retired by the Board of Trustees upon the filing of an 'Application for Disability Retirement in the Line of Duty' by the Member or his department head with the Administrator, provided that:

- (1) The Member has applied for and been granted worker's compensation benefits on account of such disability; and
- (2) After a medical examination of the Member, by or under the direction of the Medical Board, the Medical Board certifies to the Board in writing that the Member is totally and permanently disabled or incapacitated for duty in the employ of the Charlotte Fire Department by reason of an injury, accident or occupational disease arising out of and in the course of his actual performance of duty in his employment with the Charlotte Fire Department.

(b) The Board of Trustees shall retire the Member within 90 days of its receipt of a medical report from the Medical Board that meets the requirements of subdivision (a)(2) of this section and when the Medical Board and the Board agree on such application.

(c) Upon the request by the Chairman or the Board, the examining member of the Medical Board on an application for disability retirement in the line of duty shall appear at a meeting of the Board to respond to any questions of a medical nature or to render any medical opinion necessary to clarify the medical report.

(d) In the event that the Medical Board shall certify that the Member is totally and permanently disabled or incapacitated for duty in the employ of the Charlotte Fire Department by reason of an injury, accident or occupational disease arising out of and in the course of his actual performance of duty in his employment with the Charlotte Fire Department and the Board of Trustees does not agree with such certification, the Board of Trustees shall deny such application. The Member shall upon such denial be given the opportunity to respond to the Board's decision. The Member shall have the right to appeal such denial to the Civil Service Board who shall render a decision on whether the Member should or should not be retired.

(e) The determination by the Board of Trustees that a Member is not entitled to disability retirement benefits under this Section provided that the Civil Service Board has not determined that he should be retired shall not prohibit such Member from filing another

'Application for Disability Retirement in the Line of Duty' at a later date, provided the application is based on additional or different facts bearing on the question of his disability.

(f) The Board of Trustees shall have the authority and may require any disability Retiree who has not attained age 70 years to undergo a medical reexamination at any time not to exceed one reexamination per year by or under the direction of the Medical Board to determine if the medical condition for which the disability Retiree was retired still exists. Upon such medical reexamination, if the disability Retiree is found able to perform active duty with the Charlotte Fire Department by the Board of Trustees, he shall be reinstated in a position equal in rank to his rank at the time he was retired. Refusal by the disability Retiree to submit to such medical reexamination or refusal to return to work as a result of finding by the Board of Trustees based on a medical reexamination shall cause all retirement benefits to cease forthwith and such person shall be entitled to apply for reimbursement of the balance, if any, of his contributions to the Retirement System in the same manner and in all respects as in Section 10 of this act.

(g) Effective July 1, 1986, upon retirement pursuant to the provisions of this Section, a Member shall receive a monthly benefit equal to seventy-two percent (72%) of his Final Average Salary, not to exceed one hundred percent (100%) of Final Average Salary, but not less than five hundred dollars (\$500.00) per month. Effective July 1, 1987, upon retirement pursuant to the provisions of this Section, a Member shall receive a monthly benefit equal to the greater of seventy-two percent (72%) or two and four-tenths percent (2.4%) multiplied by his Membership Service, of his Final Average Salary, not to exceed one hundred percent (100%) of Final Average Salary, but not less than five hundred dollars (\$500.00) per month. Benefits payable under this Section shall be effective on the date of approval by the Board of Trustees or upon exhaustion of worker's compensation benefits, whichever is later.

Sec. 20. *Disability Retirement not in the Line of Duty.* (a) A Member, with 10 or more years of Membership Service Credit, whom the Board of Trustees finds to be totally and permanently disabled or incapacitated for duty in the employ of the Charlotte Fire Department by reason of an injury, accident or disease that did not arise out of and in the course of his actual performance of duty in his employment with the Charlotte Fire Department, may be retired by the board of Trustees upon the filing of an 'Application for Disability Retirement Not in the Line of Duty' by the Member or his department head with

the Administrator, provided that:

- (1) The Member has applied for and been granted accident and sickness benefits on account of such disability; and
- (2) After a medical examination of the Member, by or under the direction of the Medical board, the Medical Board certifies to the board in writing that the Member is totally and permanently disabled or incapacitated for duty in the employ of the Charlotte Fire Department by reason of an injury, accident or disease that did not arise out of and in the course of his actual performance of duty in his employment with the Charlotte Fire Department.

(b) The Board of Trustees shall retire the Member within 90 days of its receipt of a medical report from the Medical Board that meets the requirements of subdivision (a)(2) of this section and when the Medical Board and the board agree on such application.

(c) Upon the request by the Chairman or the board, the examining member of the Medical board on an application for disability retirement not in the line of duty shall appear at a meeting of the board to respond to any questions of a medical nature or to render any medical opinion necessary to clarify the medical report.

(d) In the event that the Medical Board shall certify that the Member is totally and permanently disabled or incapacitated for duty in the employ of the Charlotte Fire Department by reason of an injury, accident or disease that did not arise out of and in the course of his actual performance of duty in his employment with the Charlotte Fire Department and the Board of Trustees does not agree with such certification, the Board of Trustees shall deny such application. The Member shall upon such denial be given the opportunity to respond to the board's decision. The Member shall have the right to appeal such denial to the Civil Service Board who shall render a decision on whether the Member should or should not be retired.

(e) The determination by the board of Trustees that a Member is not entitled to disability retirement benefits under this section and the Civil Service board has not determined that he should be retired, shall not prohibit such Member from filing another 'Application for Disability Retirement Not in the Line of duty' at a later date, provided the application is based on additional or different facts bearing on the question of his disability.

(f) The Board of Trustees shall have the authority and may require any disability Retiree who has not attained age 70 to undergo a medical reexamination at any time not to exceed one reexamination per year by or under the direction of the Medical board to determine if the

medical condition for which the disability Retiree was retired still exists. Upon such medical reexamination, if the disability Retiree is found able to perform active duty with the Charlotte Fire Department by the Board of Trustees, he shall be reinstated in a position equal in rank to his rank at the time he was retired. Refusal by the disability Retiree to submit to such medical reexamination or refusal to return to work as a result of a finding by the Board of Trustees based on a medical reexamination shall cause all retirement benefits to cease forthwith and such person shall be entitled to apply for reimbursement of the balance, if any, of his contributions to the Retirement System in the same manner and in all respects as in Section 10 of this act.

(g) Effective July 1, 1986, upon retirement pursuant to the provisions of this section, a Member shall receive a monthly benefit equal to thirty-six percent (36%) of his Final Average Salary, plus one and eight-tenths percent (1.8%) of his Final Average Salary multiplied by the Membership Service Credit in excess of 10 years, not to exceed one hundred percent (100%) of his Final Average Salary, but not less than five hundred dollars (\$500.00) per month. Benefits payable under this section shall be effective on the date of approval by the Board of Trustees.

Sec. 21. *Death Benefits.* (a) In the event of the death of any Member of the System prior to his effective date of retirement pursuant to the provisions of Sections 15, 16, 18, 19, or 20 of this act, his Designated Beneficiary(s) on file with the Retirement System, or his personal representative in the absence of any Designated Beneficiary, shall be entitled to reimbursement of the total Contributions by him and the City of Charlotte to the System, plus, effective July 1, 1986, two and five-tenths percent (2.5%) interest compounded annually on the contribution balance at the beginning of each Plan Year. Such Beneficiary(s) or personal representative must complete and file the form 'Application for Survivor Death Benefits' with the Administrator to receive reimbursement. As an option, a Beneficiary may elect to receive an annuity equal to and in lieu of a lump sum distribution by so designating on the above form.

(b) In the event of the death of a Retiree of this System before he has received monthly benefit payments equal to the present value on the effective date of retirement of the total Contributions by him and the City of Charlotte to the system, plus, effective July 1, 1986, two and five-tenths percent (2.5%) interest compounded annually on the contribution balance at the beginning of each Plan Year and provided a monthly benefit is not payable in accordance with Section 17, the Designated Beneficiary(s) or estate of the Retiree shall be

entitled to an amount equal to the difference between such contributions, plus interest, and the sum of the monthly benefit payments received by the Retiree. Such Beneficiary(s) or personal representative must complete and file the form 'Application for Survivor Death Benefits' with the Administrator to receive reimbursement.

Sec. 22. *Coordination of Benefits.* The Board of Trustees shall reduce the amount of any benefits payable under the provisions of this section by any amount of benefits being concurrently paid to a Retiree by or on behalf of the City of Charlotte.

Sec. 23. *Post-Retirement Adjustments.* The retirement benefits payable to a Retiree pursuant to the provisions of this act may be adjusted at the discretion of the Board of Trustees based upon the prevailing economic and funding conditions. Such adjustment shall not be paid until such adjustment is ratified by the City of Charlotte.

"TITLE V. METHOD OF FINANCING.

Sec. 24. *Member Contributions.* Each Member shall contribute to the Charlotte Firefighters' Retirement System and the City of Charlotte shall cause to be deducted from each and every payroll of such Member, an amount equal to the Member's Compensation multiplied by the sum of the then current social security contribution rate and five percent (5%).

Notwithstanding any provision of this act to the contrary, effective July 1, 1983, the City of Charlotte, as an employer, pursuant to the provisions of Section 414(h)(2) of the Internal Revenue Code of 1986, as amended from time to time, may elect to pick up and pay the contributions that would be payable by the Members of the Retirement System under this section with respect to the service of the Members after June 30, 1983.

The Members' contributions picked up by the City of Charlotte shall be designated for all purposes of the Retirement System as Member contributions, except for the determination of tax upon a distribution from the Retirement System. These contributions shall be credited to the fund created by this act accumulated within the fund in a Member's account that shall be separately established for the purpose of accounting for picked-up contributions. Member contributions picked up by the City of Charlotte shall be payable from the same source of funds used for the payment of Compensation to a Member. A deduction shall be made from a Member's Compensation equal to the amount of his contributions picked up by the City of Charlotte. This deduction, however, shall not reduce his Compensation for purposes of the Retirement System. Picked-up

contributions shall be transmitted to the Retirement System.

Sec. 25. *City of Charlotte Contributions.* (a) The City of Charlotte shall contribute to the Charlotte Firefighters' Retirement System an amount equal to the Member's Compensation multiplied by the sum of the then current social security contribution rate and five percent (5%), for each and every payroll of such Member.

(b) Should any Member of this Retirement System enter the Armed Forces of the United States of America, the City of Charlotte shall contribute to the Charlotte Firefighters' Retirement System for each and every payroll an amount equal to the Compensation such Member would have earned based upon the last pay grade with the Fire Department multiplied by the contribution rate established pursuant to subsection (a) of this section for a period not to exceed the lesser of the Member's actual period of active military duty or five years.

(c) Should any Member of the Retirement System enter the Armed Forces of the United States of America, upon approval by the City Council, the City of Charlotte by and on behalf of such Member may contribute an amount equal to, but not to exceed, the Compensation such Member would have earned based upon the last pay grade with the Fire Department multiplied by the contribution rate established pursuant to Section 24 of this act. Any contributions by and on behalf of such Member shall inure to the benefit of such Member as though made by such Member under the provisions of this act unless otherwise specified in this act.

(d) In addition thereto, the City Council may, within its discretion and upon the recommendation of the Board of Trustees, appropriate funds necessary to provide a cost of living increase to the Retirees of the System.

Sec. 26. *Other.* Any other contributions by or on the behalf of any Member or the City of Charlotte pursuant to the provisions of this act, shall be received by the Charlotte Firefighters' Retirement System.

"TITLE VI. ADMINISTRATION BY BOARD OF TRUSTEES.

Sec. 27. *General.* The Board of Trustees heretofore established is hereby continued. The general administration, management and responsibility for the proper operation of the Retirement System and for construing and making effective the provisions of this act are vested in the Board of Trustees.

Sec. 28. *Body Politic and Corporate.* The Board of Trustees shall be a body politic and corporate under the name of the Board of Trustees of the Charlotte Firefighters' Retirement System and as a

body politic and corporate shall have the right to sue and be sued, shall have perpetual succession and a common seal, and in said corporate name shall be able and capable in law to take, receive, demand and possess all kinds of property hereinafter specified, and to bargain, sell, grant, transfer or dispose of all such property as it may lawfully acquire. All such property owned or acquired by said body politic and corporate shall be exempt from all taxes imposed by the State or any political subdivision thereof, specifically, but not limited to, income, license, machinery, franchise and sales taxes.

Sec. 29. *Board of Trustees.* The Board of Trustees shall consist of 10 Trustees, as follows: (i) City Manager, or some other City department head or employee as duly designated by the City Manager; (ii) City Finance Director, or a deputy finance director as duly designated by the City Finance Director; (iii) City Treasurer; (iv) a Chairman of the Board and three Trustees to represent the public and who are residents of Mecklenburg County and who are appointed by the Resident Judge of the Superior Court of Mecklenburg County and who shall hold office for a period of three years or until their successor shall have been appointed and been qualified; and (v) three Members of the Retirement System to be elected by a Majority Vote of the Members of the Retirement System for a term of three years. The terms of office for elected Trustees shall be graduated so that only one Trustee's term shall expire each year. Any Member shall be eligible to succeed himself as a Trustee.

Sec. 30. *Election of Member Trustees.* The elections of the member Trustees as provided for in Section 29(v) shall be administered in accordance with rules and regulations adopted by the Board of Trustees from time to time.

Sec. 31. *Oath of Office.* An oath of office shall be administered to the Chairman of the Board and each Trustee prior to their assumption of duties with the Board of Trustees. The oath of office shall be administered by the Mayor only after the Trustee having first qualified and within 10 days after having been appointed or elected. The Chairman of the Board and each Trustee shall swear to diligently and honestly administer the affairs of said Board and that he will not knowingly violate or willfully permit to be violated any of the provisions of the law applicable to the Retirement System. Such oath of office shall be subscribed to by the Member making it, and certified by the officer by whom it is taken, and immediately filed in the office of the City Clerk.

Sec. 32. *Vacancy on Board of Trustees.* (a) In the event that an elected Trustee of the Board shall make application for benefits under this act he shall first submit a written notice to the Chairman of the Board disqualifying himself from his trusteeship.

(b) A vacancy shall be deemed to have occurred if a Trustee or the Chairman fails to attend any three consecutive meetings of the Board without prior notification unless excused for cause by the Trustees attending said meetings.

(c) A vacancy shall be deemed to have occurred if a Trustee or the Chairman should die.

(d) If a Trustee shall deem himself incapable of fulfilling his Board obligations for any reason or if any condition exists that renders the Trustee disqualified, the Trustee shall submit a written notice to the Chairman disqualifying himself from his trusteeship. If the Chairman shall deem himself to be disqualified for any of the foregoing reasons, he shall submit written notice to the Resident Judge of the Superior Court of Mecklenburg County.

(e) If a vacancy shall occur pursuant to the provisions of subsections (a) through (c) of this section, the vacancy shall be filled within 90 days after the date of the vacancy, for the unexpired portion of the term, in the same manner as the position was previously filled.

Sec. 33. *Compensation of Trustees.* The members of the Board of Trustees of the Charlotte Firefighters' Retirement System shall serve without compensation, but shall be reimbursed for all reasonable and necessary expenses incurred through service upon said Board.

Sec. 34. *Officers of System.* (a) The Chairman of the Board, named pursuant to the provisions of Section 29(d) of this act, shall preside at all meetings that he is in attendance.

(b) At its first regular meeting each Year the Board shall elect from its membership: (1) A Vice Chairman, who shall preside at any meeting that the Chairman is absent; and (2) A Secretary of the Board, who shall be responsible for the recording and certifying of the record of proceedings.

(c) The City Treasurer shall be the Treasurer of the Retirement System and shall be custodian of its assets.

Sec. 35. *Meetings.* (a) The Board of Trustees shall conduct its business at meetings that conform with the 'Open Meetings Law,' Article 33C of Chapter 143 of the General Statutes, G.S. 143-318.9 through G.S. 143-318.18.

(a1) The Board of Trustees shall hold meetings regularly, at least one in each calendar quarter, and shall designate the time and place thereof. The first regular meeting in each Plan Year shall be

held on the third Thursday of the month of July.

(b) The Chairman or, in the absence of the Chairman, the Vice Chairman may hold a special meeting and/or an emergency meeting at his discretion. Additionally, upon the written request of two members of the Board of Trustees, the Chairman shall call a special meeting of Board.

When a special meeting is called, the Administrator shall insure that notice is given to each Trustee either in person or by first class mail to the record of address on file with the Administrator. Such notice shall include the purpose of the meeting and designate the time, date and place thereof. The Chairman or Vice Chairman shall insure that the business of the special meeting be limited to the purpose as set forth in the notice.

When an emergency meeting is called, the Administrator shall attempt to notify each Trustee by telephone to the telephone number on file with the Administrator.

(c) Each Trustee shall be entitled to one vote on each motion presented to the Board of Trustees. The Chairman shall only vote in case of a tie or in such case as to create a quorum of voting. Five attending Trustees, including the Chairman, shall constitute a quorum at any meeting of the Board and at least five affirmative votes shall be necessary for a decision by the Trustees at any meeting of said Board. Prior to any discussion of a specific agenda item for which a Trustee or the Chairman deems himself to have a conflict of interest, or at such point during discussion that he determines himself to have a conflict of interest, the member of the Board shall thereupon make such conflict known to the Board and the Board shall inquire into the nature of the conflict and make a determination whether a conflict of interest exists and if the Board member should participate in discussion and vote on the agenda item.

(d) The Board of Trustees through the Secretary shall cause to be kept a record of all of its proceedings which shall be open to public inspection.

Sec. 36. Employment of Professional Services. (a) The Board of Trustees shall have the authority to employ and/or utilize professional and secretarial services and to purchase and maintain such property, equipment and supplies as are deemed necessary for the proper operation of the System. All expenses, fees and/or retainers for the employment of services shall be borne by the System with the singular exception of the employment of the Actuary. All fees and expenses in connection with the employment of a qualified actuary shall be paid by the City of Charlotte.

(a1) *Actuary.* The Board of Trustees shall annually request the City to employ a qualified Actuary to perform such studies and evaluations of the Charlotte Firefighters' Retirement System as may be necessary and/or desirable by the Board or City in connection with the administration of the System. Within the meaning of this subsection, a qualified Actuary shall be an Actuary who has been enrolled by the Joint Board for the Enrollment of Actuaries and shall be an associate, member, or fellow of the conference of Actuaries in Public Practice or a member of the American Academy of Actuaries.

(b) *Medical Board.* The Board of Trustees shall appoint a Medical Board to be composed of three physicians to serve at the pleasure of the Board. The Medical Board shall arrange for and evaluate all medical examinations required under provisions of this act. The Medical Board shall also investigate and evaluate all medical evidence, statements, and certificates submitted by and on behalf of a Member in connection with an application for disability retirement. The Medical Board shall render its conclusions and recommendations in writing to the Board of Trustees in accordance with the provisions of this act.

(c) *Legal Counsel.* The City attorney and staff shall be the legal advisor to the Board of Trustees.

(d) *Auditor.* The Board of Trustees shall appoint an Auditor who shall be a certified public accountant.

(e) *Administrator.* The Board of Trustees shall have the authority to appoint an Administrator who shall be responsible for the administration and coordination of all System operations and activities that are not otherwise specified in this act. Such administration shall be in accordance with rules and regulations of this act and the policy and direction of the Board. In the absence of an Administrator, the Secretary of the Board as specified in Section 34(b)(2) shall be responsible for the coordination of Board meetings and providing proper notice of such meetings.

Sec. 37. *Committees.* The Chairman of the Board shall appoint an Investment Committee and shall have the authority to appoint other committees of the Board as deemed appropriate.

Sec. 38. *Authority of Board of Trustees to Recommend Changes to the Retirement System.* The Board of Trustees shall have the authority to recommend to the City changes to the Retirement System. All recommendations for changes must be actuarially sound and must take into account the interest of all Participants in the System.

Sec. 39. *Authority of City of Charlotte to Make Changes with Respect to the Retirement System.* Upon the recommendation of the Board of Trustees as provided in Section 38 of this act, the City may, within its discretion, increase or decrease the rate of contribution of the Members of the System and the City of Charlotte as may be necessary for the proper operation of the Retirement System. Provided, however, that no change shall reduce benefits being paid to Retirees of the System.

The City may deviate from the provisions of this act to the extent necessary to make any changes in the System required by the Internal Revenue Service prior to its issuing a favorable determination letter under Section 401(a) and Section 501(a) of the Internal Revenue Code of 1986, as amended from time to time, and as required by the Internal Revenue Service to maintain the qualified status of the Retirement System.

Sec. 40. *Authority of City of Charlotte to Recommend Changes to the Retirement System.* The City may recommend to the General Assembly of the State of North Carolina changes to the Retirement System. All recommendations for changes must be actuarially sound and must take into account the interest of all Participants in the System.

Sec. 41. *Rules and Regulations.* Consistent with the provisions of this act, the Board of Trustees shall have the authority to adopt the rules and regulations for the administration of the Retirement System and for the transaction of its business.

"TITLE VII. RECORD-KEEPING AND REPORTING REQUIREMENTS.

Sec. 42. *Record-Keeping.* The Administrator, or the Secretary of the Board in the absence of an administrator, shall maintain all data, files and records as is necessary to comply with the reporting requirements of this act.

Sec. 43. *Annual Audit.* There shall be an annual Audit of the books of the System. The Audit shall be performed by the Auditor as specified in Section 36(d).

Sec. 44. *Annual Actuarial Valuation.* There shall be an annual Actuarial Valuation as of the 1st of July. The Valuation shall be performed by the actuary as specified in Section 36(a). Such Valuation shall be completed and presented to the Board no later than the second regular quarterly meeting each year.

Sec. 45. *Annual Report to City Council.* An annual report of the financial and actuarial condition of the System, as of the preceding June 30, shall be prepared and forwarded to the City Council in the quarter after receipt of the System's audit report from the Auditor. Such report shall contain but shall not be limited to the Auditor's

opinion, such statements contained in the Auditor's report, a summary of the annual actuarial valuation and the actuary's valuation certification.

Sec. 46. *Annual Report to Members.* A copy of the report required by Section 45 shall be provided to each of the fire stations and Fire Department administrative offices of the City of Charlotte.

Sec. 47. *Other Reports.* The Administrator, or the Secretary of the Board in the absence of an administrator, shall be responsible for insuring that all reporting requirements with the Internal Revenue Service and the United States Government, including its various other agencies, departments, and offices, are complied with.

"TITLE VIII. CUSTODY AND INVESTMENT OF SYSTEM ASSETS.

Sec. 48. *Trusteeship of Funds.* The Board of Trustees of the Charlotte Firefighters' Retirement System shall be the Trustee of the funds and assets of the System and shall have the power to take by gift, grant, devise or bequest any money, real or personal property or other things of value, and hold, sell or invest the same.

Sec. 49. *Custody of System Assets.* The Treasurer of the Retirement System shall be the custodian and responsible for the safekeeping of all funds paid into the Charlotte Firefighters' Retirement System. The Treasurer shall deposit said funds in a bank or banks as designated by the Board of Trustees. The Treasurer may, with Board concurrence, use one or more nominees to facilitate transfer of the System's securities and may hold the securities in safekeeping with Federal Reserve System, a clearing corporation, or a custodian bank which is a member of the Federal Reserve System. All payments from said funds shall be authorized by the Treasurer only upon the signed, written request of the Administrator, or the Secretary of the Board in the absence of an administrator. The Treasurer shall furnish such bond as shall be required by the Board of Trustees and premium for said bond shall be paid out of the funds of the System.

Sec. 50. *Investment/Reinvestment of Funds and Assets.* The Board of Trustees shall be vested with the authority and responsibility and shall have full power to hold, purchase, sell, assign, transfer, lend and dispose of any of the securities and investments in which the System shall have been invested, as well as the proceeds of said investments and any monies belonging to the System. The Board of Trustees as fiduciaries shall:

(1) Discharge its duties solely in the interest of the Participants and the Beneficiaries;

(2) Act with the same care, skill, prudence and diligence under the circumstances then prevailing, that a prudent person acting in a similar capacity and familiar with those matters would use in the conduct of a similar enterprise with similar aims;

(3) Act with due regard for the management, reputation and stability of the issuer and the character of the particular investments being considered;

(4) Make investments for the exclusive purpose of providing benefits to Participants and Participants' Beneficiaries;

(5) Give appropriate consideration to those facts and circumstances the Board of Trustees knows or should know are relevant to the particular investment or investment course of action involved, including the role the investment or investment course of action plays in that portion of the System's investments for which the Board of Trustees has responsibility, and shall act accordingly. Appropriate consideration shall include, but is not limited to, a determination by the Board of Trustees that a particular investment or investment course of action is reasonably designed as part of the investments of the System to further the purposes of the System taking into consideration the risk of loss and the opportunity for gain or other return associated with the investment or investment course of action; and consideration of the following factors as they relate to the investment or the investment course of action:

- a. The diversification of the investments of the system;
- b. The liquidity and current return of the investments of the System relative to the anticipated cash flow requirements of the System; and
- c. The projected return of the investments of the System relative to the funding objections of the System;

(6) Give appropriate consideration to investments which would enhance the general welfare of the City and its citizens if those investments offer the safety and rate of return comparable to other investments held by the System and available to the Board of Trustees at the time the investment decision is made;

(7) May use a portion of income of the System to defray the cost of investing, managing and protecting the assets of the System; and

(8) May utilize the services of Investment Fiduciaries to manage the assets of the System. These Investment Fiduciaries shall be subject to the terms, conditions, and limitations provided in this section and any limitations as set forth by the Board of Trustees.

"TITLE IX. RESTRICTIONS.

Sec. 51. *Restrictions.* Notwithstanding any provision of this act to the contrary:

(1) No part of the funds contributed to the Retirement System pursuant to this act, or the income thereon, may be used for, or diverted to, purposes other than for the exclusive benefit of Participants of the Retirement System.

(2) Upon termination of the Retirement System or upon complete discontinuance of contributions to the Retirement System, the rights of all Participants of the Retirement System to benefits accrued to the date of the termination or discontinuance, to the extent then funded, are nonforfeitable.

(3) Forfeitures under the Retirement System may not be applied to increase the benefits that any Participant would otherwise receive under the Retirement System.

(4) Notwithstanding any provision of the Retirement System to the contrary, the maximum annual benefit payable in the form of a straight life annuity from the Retirement System on behalf of a Participant, when combined with any benefits from another qualified benefit plan maintained by the City, shall not exceed the amount as provided in this section. If the normal form of payment is other than a straight life annuity or a qualified joint and survivor annuity, the amount so determined hereunder shall be adjusted on an actuarially equivalent basis to reflect such other payment form.

If a Participant has completed 10 or more years of service, the maximum annual benefit payable in accordance with this subdivision (4) shall be the lesser of a. and b. below:

- a. Ninety thousand dollars (\$90,000) (or, beginning January 1, 1988), such larger dollar amount as the Commissioner of Internal Revenue may prescribe. Such amount shall be the maximum annual benefit pursuant to this subdivision a. for that calendar year and shall apply to the limitation year ending with or within that calendar year.
- b. The average annual Compensation the Participant received from the City during the two consecutive calendar years which would produce the highest such average.

If a Participant has completed less than 10 years of service, the maximum annual benefit payable in accordance with this subdivision (4) shall be the lesser of subdivisions a. and b. above, multiplied by the ratio that the Participant's actual number of years of service bears to 10.

If the payment of a benefit to a Participant begins before he attains age 62, the maximum benefit shall be actuarially adjusted to that amount which, if paid in the same form and beginning at the same time as his benefit, would be the actuarial equivalent of the

maximum benefit payable in the normal form of retirement allowance beginning on the first day of the month coincident with or next following his attaining the age of 62. The reductions required by this paragraph shall in no event reduce the limitation in this subdivision a. below seventy-five thousand dollars (\$75,000), if the benefit begins on or after the Participant's attainment of age 55 or the actuarial equivalent of the seventy-five thousand dollars (\$75,000) benefit limitation for age 55, if the benefit begins prior to such age.

For purposes of this subdivision (4), if benefits begin before age 62, the maximum annual benefit payable shall be adjusted by an interest rate assumption not less than the greater of five percent (5%) or the rate specified in the Retirement System. If payment of a Participant's benefit begins after age 65, the maximum annual benefit payable shall be adjusted by an interest rate assumption not greater than the lesser of five percent (5%) or the rate specified in the Retirement System.

In the event a Participant is covered by one or more defined benefit plans maintained by the City, all such plans shall be aggregated in determining whether the maximum benefit limitations hereunder have been met. Further, the maximum retirement allowance as noted above may be decreased as determined necessary by the City to ensure that all plans will remain qualified under the Internal Revenue Code of 1986, as amended from time to time.

In addition to the other limitations set forth in the Retirement System and notwithstanding any other provisions of the Retirement System, the Accrued Benefit, including the right to any optional benefit provided in the Retirement System (and all other defined benefit plans required to be aggregated with the Retirement System under the provisions of Section 415 of the Internal Revenue Code of 1986, as amended from time to time), shall not increase to an amount in excess of the amount permitted under Section 415 of the Internal Revenue Code of 1986, as amended from time to time.

(5) Any benefit payable to a Participant pursuant to Section 4 of this act shall commence not later than the April 1 immediately following the calendar year in which the Participant attains age 70 1/2 or, if later, the April 1 immediately following the calendar year in which the Participant terminates service. Additionally, the distribution of any such benefit must satisfy the minimum distribution requirements set forth in this paragraph and must be consistent with Treasury Regulations, as of the required beginning date. The minimum distribution for a calendar year equals the Participant's nonforfeitable Accrued Benefit at the beginning of the year divided by

the Participant's life expectancy or, if applicable, the joint and last survivor expectancy of the participant and his Designated Beneficiary. The minimum distribution shall be computed by using the life expectancy multiples under Treasury Regulation 1.72-9. The minimum distribution for a calendar year subsequent to the first calendar year for which a minimum distribution is required may be computed by redetermining the applicable life expectancy. However, there shall be no redetermination of the joint life and last survivor expectancy of the Participant and a nonspouse Designated Beneficiary in a manner which takes into account any adjustment to a life expectancy other than the Participant's life expectancy. A distribution to the Participant in the form of a life annuity, joint and survivor annuity, or an annuity over a fixed period will satisfy the minimum distribution requirements of this paragraph if the method of distribution provides non-increasing payments or otherwise satisfies Treasury Regulations. If the Participant dies after the payment of his benefit has commenced, the death benefit provided by this act shall be paid over a period which does not exceed the payment period which had commenced. If a Participant dies prior to the time the payment of his benefit commences, the death benefit provided by this act shall be paid over a period not exceeding: (i) five years after the date of the Participant's death; or (ii) if the Beneficiary is a Designated Beneficiary, over the Designated Beneficiary's life or life expectancy. No payment of benefit over a period described in (ii) shall be permitted, unless the payment of such benefit to the Designated Beneficiary will commence no later than one year after the date of the Participant's death, or, if later, and the Designated Beneficiary is the Participant's surviving spouse, the date the Participant would have attained age 70 1/2. The life expectancy multiples under Treasury Regulation 1.72-9 shall be used for purposes of applying this paragraph. The life expectancy of a Participant's surviving spouse may be recalculated not more frequently than annually, but the life expectancy of a nonspouse Designated Beneficiary may not be recalculated after the commencement of payment of benefits to the Designated Beneficiary. Any amount paid to a Participant's child, which becomes payable to the Participant's surviving spouse upon the child's attaining the age of majority, shall be treated as paid to the Participant's surviving spouse for purposes of applying this paragraph.

"TITLE X. Miscellaneous.

Sec. 52. *Liabilities of Trustees.* No member of the Board of Trustees shall be personally liable by reason of his service as a Trustee for any acts performed by him as a Trustee, except for

malfeasance in office.

Sec. 53. *Assignments Prohibited.* The right of a Member to any benefits payable or reimbursement of any contributions, and any other right accrued or accruing to any person pursuant to the provisions of this act, and any monies belonging to the Retirement System shall not be subject to execution, garnishment, attachment, the operation of bankruptcy or insolvency law, or any other process of law whatsoever, and shall be unassignable except as is specifically authorized by statute. If a Member is covered under a group insurance or prepayment plan participated in by the City, and should he be permitted to, and elect to, continue such coverage as a Retiree, he may authorize the Board of Trustees to have deducted from his monthly retirement benefits the payments required of him to continue coverage under such group insurance or prepayment plan.

Sec. 54. *Errors.* Should any change in the records result in any person receiving from the Retirement System more or less than he would have been entitled to receive had the records been correct, the Board of Trustees shall correct such error, and as far as practicable shall adjust the payment in such manner that the Actuarial Equivalent of the benefit to which the said person was correctly entitled shall be paid.

Sec. 55. *Protection Against Fraud.* Whoever with intent to deceive shall make any statements and/or reports required under this act which are untrue, or shall falsify or permit to be falsified any records of the Retirement System, or who shall otherwise violate, with intent to deceive, any of the provisions of this act, shall be prosecuted to the fullest extent of the law.

The Charlotte Firefighters' Retirement System shall have the right of setoff for any claim arising from embezzlement or by fraud of a Participant.

Sec. 56. *Subrogation Provisions.* In the event a Member becomes entitled to benefits pursuant to the provisions of this act as a result of an accident, injury or disease caused by the act of a third party, the Charlotte Firefighters' Retirement System shall be subrogated to all rights of recovery by said Member or said Member's Beneficiary(s) against such third party to the extent of the benefits the Retirement System pays or is obligated to pay.

Sec. 57. *Laws Inconsistent Repealed.* All laws and clauses of law pertaining to the Charlotte Firemen's Retirement System that are in conflict with the provisions of this act are hereby revoked.

Sec. 58. *Savings Provisions.* If any section or part of this act is for any reason held to be invalid or unconstitutional, such holding shall not be construed as affecting the validity of the remaining sections of this act or the act in its entirety; it being the legislative intent that this act shall stand notwithstanding the invalidity of any section or part of a section.

Sec. 59. This act shall apply to the City of Charlotte only."

Sec. 2. None of the provisions of this act shall create an additional liability for the Charlotte Firefighters' Retirement System unless sufficient assets are available to pay for the liability.

Sec. 3. This act shall become effective July 1, 1987.

In the General Assembly read three times and ratified this the 29th day of June, 1987.

H.B. 583

CHAPTER 507

AN ACT TO AMEND THE LAW REGARDING RETIREMENT AS
IT APPLIES TO THE WILSON ECONOMIC DEVELOPMENT
COUNCIL.

The General Assembly of North Carolina enacts:

Section 1. Should the Wilson Economic Development Council become a participating employer in the Local Governmental Employees' Retirement System, the governing board of the Council may provide for its employees to receive prior service credits in the Retirement System equal to the period of prior service these employees have rendered to the Council as of the effective date of participation in the Retirement System. In lieu of the foregoing, the governing body of the Council may provide for its employees to receive prior service credit equal to the amount of service that the assets of the Council's retirement plan, plus additional contributions as the Council and/or its employees may elect to make, will purchase, as the cost to purchase is calculated by the Retirement System.

Sec. 2. All laws and clauses of laws in conflict herewith, to the extent of this conflict, shall be inapplicable to the Wilson Economic Development Council.

Sec. 3. This act shall apply to the Wilson Economic Development Council only.

Sec. 4. This act shall become effective July 1, 1987.

In the General Assembly read three times and ratified this the 29th day of June, 1987.

H.B. 584

CHAPTER 508

AN ACT TO ESTABLISH WINSTON-SALEM FIREMEN'S RETIREMENT FUND ASSOCIATION.

The General Assembly of North Carolina enacts:

Section 1. Chapter 388, Session Laws of 1973, as amended by Chapter 15, Session Laws of 1977, Chapter 284, Session Laws of 1979, Chapter 647, Session Laws of 1981 and Chapter 464, Session Laws of 1983 is rewritten to read:

"Section 1. That the name of the Association herein established shall be Winston-Salem Firemen's Retirement Fund Association, hereinafter referred to as the Association. References to the Association as of a date prior to April 3, 1979, and following July 1, 1973, shall mean the Winston-Salem Fire-Public Safety Retirement Fund Association, which was the name of the Association during such period.

Sec. 2. Subject to the provisions of Section 16 hereof, the following persons shall automatically be members of the Association:

(a) As of July 1, 1987, any person who was a member of the Association following the close of business of the Association immediately preceding such date.

(b) As of July 1, 1987, and thereafter, any person not covered under (a) above who shall have been regularly and continuously employed full time by the Fire Department of the City of Winston-Salem (hereinafter referred to as the Fire Department), including any Fire Department mechanic or electrician, who shall have attained his 18th birthday and shall not have attained his 40th birthday. Any person not covered under (a) above who was hired by the Fire Department prior to July 1, 1987, and continues to be employed by the Fire Department on such date, and who had attained his 30th birthday when hired but had not then attained his 40th birthday, may elect within 90 days following July 1, 1987, to become a member by contributing to the Association the sum of twelve dollars (\$12.00) per month from his date of hire by the Fire Department, plus interest at the rate of seven percent (7%) per annum, computed on the amount accrued as of the end of each fiscal year of the Association.

(c) Notwithstanding the provisions of subsection (b) immediately preceding, as a condition to any person's becoming a member of the Association pursuant to the provisions of subsection 2(b) or 16(a), the Trustees may require such person to undergo a physical examination by a physician or physicians of good standing or repute selected by the Trustees. If it shall be found from such physician's report that such

person is not in good physical or mental condition as of the date he would be eligible to become a member of the Association, such person shall be denied membership in the Association. The determinations of whether or not such person shall be required to undergo a physical examination and whether or not he is in good physical or mental condition shall be made by the Trustees. In making such determinations, all persons similarly situated shall be treated alike. The cost of any medical examination required pursuant to the provisions of this subsection (c) shall be borne by the person seeking membership in the Association.

Sec. 3. The Association may provide and raise funds in any legal manner to be used as a pension fund for such person or persons as may be entitled thereto under the provisions of this act and to such extent as is hereinafter set out.

Sec. 4. The governing body of the Association shall consist of a Board of Trustees five in number, four from the membership of the Fire Department, and one to be appointed by the Insurance Commissioner of the State of North Carolina.

Sec. 5. The Trustees from the membership of the Fire Department shall be elected by the members of the Fire Department for four-year terms. Such terms shall be staggered, so that two of the Trustees shall be elected during the month of January of each year evenly divisible by two. Prior to each election, each fire company may, by majority vote of the active members of the company, nominate one candidate for election as Trustee. Only members of the Association, in good standing, who have continuously served in the Fire Department for a period of at least four years shall be eligible for election as Trustees. The two nominees receiving the highest number of votes cast in such election shall be elected. A tie shall be resolved by casting lots. In such election, each member of the Association in good standing may vote for two nominees. For purposes of this Section 5, the administrative offices of the Fire Department shall be deemed to be a fire company.

Sec. 6. Any Trustee may resign at any time by giving notice in writing to the other Trustees. Should any Trustee who is a member of the Fire Department cease to be a member of the Fire Department for any reason, he shall automatically cease to be a Trustee. With regard to any Trustee elected by the members of the Association who resigns or ceases to be a Trustee for any reason, his successor shall be elected as provided in Section 5 of this act; provided, that such election shall be held as soon as practicable following such resignation or cessation, each member of the Association in good standing may vote for only one nominee, the one nominee receiving the highest

number of votes shall be elected, and the election shall be only for the remaining unexpired term of the predecessor Trustee. Should the Trustee who was appointed by the Insurance Commissioner of the State of North Carolina resign or cease to be a Trustee for any reason, his successor shall be appointed by the said Insurance Commissioner.

Sec. 7. The Board of Trustees is herein fully vested with the exclusive right and authority to pay out the funds of this Association, as provided for in this act. All matters and claims provided for under this act shall be passed upon by said Trustees and all decisions and actions of said Trustees shall be binding upon the Association and the members thereof. Every Trustee shall be entitled to one vote except the chairman of the Board of Trustees, who shall be entitled to vote only to break a tie. At every annual meeting of the Board of Trustees, the Trustees shall elect a chairman, vice-chairman, secretary and treasurer. The secretary and treasurer need not be Trustees, and the offices of secretary and treasurer may be combined into a single office, in the discretion of the Trustees. The annual meeting of the Board of Trustees shall be held as soon as is practicable following the end of each calendar year at such place and at such time as shall be determined by the Trustees.

Sec. 8. The secretary of the Association (or the secretary-treasurer if such offices shall be combined into a single office) shall be entitled to receive compensation in an amount not to exceed one hundred dollars (\$100.00) per month, as determined by the Trustees. The Trustees, as such, including the chairman and the vice-chairman, shall serve without compensation. The Trustees may authorize reimbursement by the Association to any officer or Trustee of the Association for all expenses incurred by such person in connection with services rendered in behalf of the Association.

Sec. 9. The Trustees shall elect a custodian of all funds and property of the Association, provided that such custodian shall have first offered proof satisfactory to the Trustees, by bond or otherwise, that it is and will be financially responsible for all property coming into its hands in a fiduciary capacity. Said custodian shall not release any of the funds or property of the Association for reasons other than investment of such funds or property except upon the written authorization of the Trustees.

The Trustees shall also elect an investment manager who may or may not be the same person as the custodian. Any such investment manager shall be a bank, or an insurance company, or an entity registered under the Investment Advisor's Act of 1940. The investment manager shall be authorized to invest and reinvest the funds or property of the Association in the investment manager's own

judgment and discretion. The investment manager shall report to the Trustees on a periodic basis, but not less frequently than each calendar quarter. The investment manager (including said custodian when acting as investment manager) shall not be liable to the Association for any act of failure to act by it, except for gross negligence or willful misconduct.

Sec. 10. A special meeting of the Board of Trustees may be called by the chairman or vice-chairman, or by any two Trustees, upon 24 hours' written notice delivered in person to the members of said Board or mailed to the last known address of each member of said Board. A majority of the Trustees in office shall constitute a quorum at any meeting and a majority vote of the Trustees at a meeting at which a quorum is present shall constitute action by the Trustees.

Sec. 11. The chairman of the Board of Trustees, when present, shall preside at all meetings. In the absence of the chairman, the vice-chairman shall act as chairman.

Sec. 12. The secretary shall keep in complete form such data as shall be necessary for actuarial valuation of the funds of the Association and for checking the disbursements for and on behalf of the Association. He shall keep minutes of all proceedings of the Board of Trustees and of the Association, and the same shall be kept in a place selected by the Trustees. The treasurer of the Association shall post yearly at each fire station and at the office of each police district, as soon as practicable following the end of each year, a financial statement of the Association.

Sec. 13. The treasurer of the Association shall deposit with the custodian all funds and property that may come into his hands for the Association. The said treasurer shall obtain a receipt from the custodian for all funds and property delivered to the custodian by the treasurer. Said custodian shall invest and reinvest such funds and property as directed by the investment manager appointed under Section 9. Notwithstanding any contrary provisions of Section 9 or of this section, the Trustees are specifically authorized and empowered to invest funds of the Association by depositing such funds with the Winston-Salem Firemen's Credit Union on condition that the Association shall receive interest at an annual rate agreed upon by the Association and such credit union.

Sec. 14. The custodian and the investment manager shall receive compensation for services rendered as may be agreed upon from time to time in writing by the Trustees and by the custodian (with respect to services rendered by the custodian) or the investment manager (with respect to services rendered by the investment manager). The

Trustees shall have the authority to employ legal counsel when, in the opinion of the Trustees, legal counsel is necessary. In case of such employment, said counsel shall be paid such fees as may be fair and reasonable as agreed upon in writing by the Trustees and the counsel so employed.

Sec. 15. On or before August 31, 1987, the Board of Trustees of the Winston-Salem Firemen's Relief Fund shall transfer to the Board of Trustees of the Winston-Salem Firemen's Retirement Fund Association out of properties and funds belonging to the Winston-Salem Firemen's Relief Fund the sum of fifty-four thousand dollars (\$54,000) in cash or assets. The assets so transferred pursuant to the immediately preceding sentence shall be transferred upon the basis of the fair market value thereof as of the date of transfer, and the particular assets to be transferred shall be determined by joint action of the Board of Trustees of the Winston-Salem Firemen's Relief Fund and the Board of Trustees of the Winston-Salem Firemen's Retirement Fund Association. All property of the Association is hereby relieved from any and all claims of the persons entitled to relief from the Winston-Salem Firemen's Relief Fund. The North Carolina Firemen's Association, its officers, members, boards and committees, are also hereby relieved of any claim of any kind whatsoever which may be based on past service, present service or future service in the Winston-Salem Fire Department. The Winston-Salem Firemen's Relief Fund and the officers, members, boards and committees of said Fund, are also hereby relieved of any claim of any kind whatsoever which may be based on past, present or future service in the Winston-Salem Fire Department, if any, so long as any claimant is entitled to benefits or pension under the provisions of this act.

Sec. 16. (a) Notwithstanding the provisions of subsection (b) immediately following, if a person who shall not be a member of the Association shall be transferred to the employment of the Fire Department from the employment of the City of Winston-Salem (hereinafter referred to as the City), the following provisions shall apply in determining whether he shall be a member of the Association following such transfer:

- (1) If he shall have attained at least his 18th birthday and shall not have attained his 40th birthday on the date of such transfer, he shall automatically become a member on such date of transfer. In determining such transferred employee's number of years of continuous employment by the City, employment with the City prior to such transfer shall be taken into account only if such employee shall elect to contribute to the Association the amount of twelve dollars (\$12.00) per month from the date of his hire by the

- City until the date of such transfer, plus interest at the rate of seven percent (7%) per annum, computed on the amount accrued as of the end of each fiscal year of the Association.
- (2) If he shall have attained at least his 40th birthday on the date of transfer, but had not attained such birthday when last employed by the City, he may elect within 90 days following such transfer to become a member. If he elects to become a member, he shall contribute to the Association the amount he would have contributed if he had become a member on the day next preceding his 40th birthday. In addition, at the option of such employee, he may further elect to contribute such additional amount as he would have contributed prior to his 40th birthday if his employment with the City had been with the Fire Department. Any such contributions shall include interest at the rate of seven percent (7%) per annum, computed on the amount accrued as of the end of each fiscal year of the Association.
 - (3) If he shall have attained at least his 40th birthday when last employed by the City, he shall be ineligible to become a member following such transfer.
 - (4) The elections specified in subdivisions (1) and (2) hereof shall be made in writing to the Trustees within 90 days following such transfer, and shall be irrevocable when made (subject to termination of membership upon subsequent separation from employment with the Fire Department). Any contributions (and interest) payable pursuant to such election shall be paid in cash in a lump sum at the time such election shall be filed.

(b) Notwithstanding the provisions of subsection (a) of Section 2 hereof, as soon as practicable following April 3, 1979, (but in no event more than 60 days thereafter), the Trustees gave each person who was then employed by the City of Winston-Salem as a Public Safety Officer an election to be a member or not to be a member of the Association. Each such election was to be made in accordance with procedures established by the Trustees and was irrevocable when made (subject to termination of membership upon a subsequent separation from the employment of the City, and subject to the provisions of subsection (a) of this Section 16). If a Public Safety Officer failed to file a timely election, he was deemed to have elected not to be a member. If a Public Safety Officer who was a member on the date of the election elected to discontinue membership (or shall have been deemed to have so elected), within 30 days following such

date there should have been refunded to him the full amount of his prior contributions to the Association, if any, without interest. If a Public Safety Officer who failed to make contributions prior to the election date elected to be a member, he shall have within 30 days following such election paid to the Association the full amount he would have contributed if he had made required contributions during the entire period that he was eligible to be a member. Such contributions included interest at the rate of six percent (6%) per annum, computed on the amount accrued as of the end of each fiscal year of the Association.

(c) Any member whose employment by the Fire Department as a Public Safety Officer shall be terminated on or after June 27, 1981, for any reason, including transfer to another department in the employment of the City, shall be terminated immediately as a member; provided, that any member who is transferred on or after July 1, 1981, to another department of the City in a fire-related job shall not become a terminated member if the following conditions are met: (i) within 15 days following the date of such transfer he shall file with the Trustees a written election to continue as a member; and (ii) such member shall be notified in writing by the secretary of the Association on or before the date of transfer of his right to make the election. If a terminated member shall reenter employment of the Fire Department, his eligibility to become a member shall be determined at that time in accordance with Section 2 hereof, except to the extent such individual may be entitled to elect to become a member upon a transfer of employment as provided in subsection (a) of this Section 16.

(d) In determining the number of years of continuous employment of a member, there shall be taken into account all years for which he shall make contributions in accordance with subsection (a) or (e) of this Section 16 or Section 19.

(e) If any member of the Association was employed by the Fire Department as a cadet, such member's number of years of employment as a cadet may be added to the period of his continuous employment with the City if, by July 31, 1981, such member contributed to the Association an amount equal to twelve dollars (\$12.00) per month for the time he was a cadet, plus interest at the rate of six percent (6%) per annum, computed on the amount accrued as of the end of each fiscal year of the Association.

(f) If a member has been employed by the City continuously for a period of 10 years and has any military service, and is not otherwise treated under Section 26 as being in the employment of the City during the period of such military service, the period of such military service shall nevertheless be added to his period of continuous

employment with the City upon such member's paying to the Association an amount equal to twelve dollars (\$12.00) for each month of such military service plus interest at the rate of seven percent (7%) per annum, compounded annually. Such military service shall be limited to the initial period of active duty in the armed forces of the United States up to the time the member was first eligible to be separated or released therefrom, and subsequent periods of such active duty as required by the armed forces of the United States up to the date of first eligibility for separation or release therefrom. The member must submit evidence satisfactory to the Trustees of the military service claimed. Such election must be made within one year after the member first becomes eligible to contribute for such military service. Credit for military service under this subsection shall not be considered service creditable under another retirement system for purposes of G.S. 128-26(a).

Sec. 17. The Treasurer of the City shall make a monthly deduction from the salary of each member of the Association (except for members in the employ of the Police Department) due him by the City in the amount directed in writing by the Trustees, not to exceed twelve dollars (\$12.00) per month, and the amount so deducted shall be turned over monthly by the said Treasurer to the custodian of the Association as hereinbefore provided, and the Association shall have the authority to accept donations from any and all sources whatsoever.

Sec. 18. If at any time there shall not be sufficient assets in the retirement fund of the Association to pay fully the persons entitled to benefits provided herein, such persons shall be paid such benefits on a pro rata basis to the extent the assets of such fund will allow, as shall be determined by the Trustees; provided, that the assets of such fund determined as of the close of any fiscal year of the Association shall in no event be less than one million dollars (\$1,000,000).

Sec. 19. Whenever any member of the Association has been employed by the City continuously for a period off at least 30 years, such member may make written application to the trustees for his normal retirement benefit, and whenever any member of the Association has been employed by the City continuously for a period of at least 25 years but not more than 30 years, such member may make written application to the Trustees for his early retirement benefit; provided, however, that such member must retire from the service of the City to receive such benefits. The normal and early retirement benefits of such member shall be a monthly pension for the remainder of his life, as provided hereinbelow. For this purpose and for the purpose of Section 20 hereof, a member shall be deemed to have been employed by the City continuously if such member shall

have been employed continuously by any combination of the Fire Department or Police Department (but only such employment by the Police Department as is described in subsection 16(b) and (c) hereof), and the transfer of a member from the employ of one of such organizations to the employ of the other such organization shall not be deemed to be a termination of employment by the City. Provided, that if a member has at least 25 years of employment with the City, but such service is not continuous solely because of a leave of absence lasting not more than a year and not described in Section 26, such member shall be deemed to have continuous employment with the City during such leave of absence; and provided further, that if a member has less than 25 years of employment with the City but the sum of his years of employment with the City plus

any leave of absence lasting not more than one year and not described in Section 26, equals or exceeds 25 years, the period of such leave shall be deemed to be continuous employment with the City if such member contributes to the Association twelve dollars (\$12.00) for each month he was on such leave, plus interest at the rate of seven percent (7%) per annum, computed on the amount accrued as of the end of each fiscal year of the Association.

The amount of the monthly pension for each member who is entitled to receive a normal retirement benefit and who retires on or after July 1, 1985, shall be one hundred eighty-five dollars (\$185.00). The amount of the monthly pension for each member who is entitled to receive an early retirement benefit and who retires on and after July 1, 1985, shall be the product of (1) and (2), where (1) is the applicable percentage listed in the following table based on his years of continuous employment at his early retirement date, and (2) is one hundred eighty-five dollars (\$185.00):

| <u>Years of Employment at Retirement Date</u> | <u>Percentage of Normal Retirement Benefit</u> |
|---|--|
| 25 | 85% |
| 26 | 88% |
| 27 | 91% |
| 28 | 94% |
| 29 | 97% |

Payment shall be subject to the provisions of Section 18 of this act.

Sec. 20. Whenever any member of the Association becomes totally and permanently unable, because of infirmity or disease affecting mind or body (whether or not induced by injury) to perform his duties for the City, which inability shall be determined by a medical examination by a physician or physicians of good standing and repute

selected by the Trustees, he shall be deemed to be a disabled member. If a disabled member has been employed by the City for at least five full years prior to suffering disability, he shall be entitled to retire and receive a monthly benefit payable for the remainder of his life.

In the case of such a member who retires as a disabled member on or after July 1, 1985, his monthly benefit shall equal seven dollars forty cents (\$7.40) times his years of service, but not to exceed one hundred eighty-five dollars (\$185.00). For this purpose only, years of service shall mean the number of full years of his service in the employment of the City. Payments shall be subject to the provisions of Section 18 of this act.

Notwithstanding the foregoing provisions of this Section 20, in the case of a disabled member whose disability shall arise out of injuries incurred in fire safety activities, such as fire fighting, fire training and fire inspection, such monthly benefit shall in no event be less than forty dollars (\$40.00) per month, whether or not such disabled member was employed by the City for at least five years prior to suffering such disability. The determination of whether such disability arises out of injuries incurred in fire safety activities shall be made by the Trustees.

Sec. 21. Any disabled member of the Association who retires under Section 19 hereof and who had not been employed by the City for a period of at least 30 years prior to retirement, shall be subject to call by the Trustees for reexamination by a physician of good standing and repute selected by the Trustees and, if based upon such examination it is determined by the Trustees that such member is able to perform active duties for the City, such member may be reinstated and receive for his services the same compensation paid to other employees of the City of his rank or classification. If such member, upon being called by the Trustees, shall refuse to submit to an examination or shall refuse to be reinstated to active duty in the employ of the City after being found to be able to perform active duty, such benefits as he is then receiving under the provisions of this act shall immediately terminate and his membership in this Association shall automatically terminate. But in the event that such member is physically unable to resume active employment, or in the event he is able and willing to resume active employment but no job with the City is open for him at such time, his pension or compensation shall continue until there shall be an opening for such member and he is reemployed by the City. For the purpose of this Section 21, employment with the City shall mean only employment with the Fire Department or Police Department (but employment with the Police Department shall be included only with regard to any such member who was employed with the Police Department prior to his retirement

under Section 20 hereof).

Sec. 22. When any member of the Association shall resign or be dismissed from employment by the City (which for this purpose shall include only employment with the Fire Department or Police Department), he shall receive a sum of money equal to all monies paid into the Association by him. Upon the death of any member of the Association while in the employment of the City, a sum of money equal to all monies paid into the Association by such deceased member shall be paid to the beneficiary or beneficiaries designated in writing by such deceased member, or in default thereof, to his estate. If, after retirement, a member of the Association shall die before having received an amount equal to his contributions to the Association, there shall be paid to the beneficiary or beneficiaries designated by such member, or in default thereof to his estate, an amount equal to his contributions less the sum of retirement benefits paid to such member. The reimbursements provided in this Section 22 shall be in cash in a lump sum, unless otherwise determined by the Trustees with the consent in writing of the recipient thereof less interest, if any, previously contributed to the Association by the member pursuant to Section 16 or Section 19.

Sec. 23. No amount payable or held by the Association under this act for the benefit of any member or beneficiary thereof shall be subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance or charge, nor shall any amount payable or held under this act for the benefit of any member or beneficiary thereof be in anywise liable for his debts, contracts, liabilities, engagements, or torts, nor be subject to any legal process to levy upon or attach, but the provisions of this Section 22 shall not be applicable as regards any dealings with or obligations to the Winston-Salem Firemen's Credit Union.

Sec. 24. Out of the amount paid to the Insurance Commissioner of the State of North Carolina upon the amount of all premiums on fire and lightning policies covering property situated in the corporate limits of the City, the Insurance Commissioner of the State of North Carolina shall pay annually to the Treasurer of the City ninety-five percent (95%), and the Treasurer of the City shall immediately pay over the same to the treasurer of the Association, or if the treasurer of the Association shall so direct, the Treasurer of the City shall pay such amount directly to the custodian.

Sec. 25. No member of this Association or Trustee shall be personally liable in any manner whatsoever to any person, association, firm or corporation by reason of his connection with, or act or acts on behalf of, said Association, unless such act or acts are fraudulently

committed.

Sec. 26. If a member of the Association, or an employee of the Fire Department or Police Department who is not a member of the Association due to failure to meet the minimum age requirements of subsection 2(b) hereof, is granted a leave of absence from employment by the City on account of accidental injury or temporary illness, military service during time of active warfare, compulsory military service in time of peace, or other good cause, for the purpose of this act such employee shall be deemed to have remained in the employment of the City during the period of such leave of absence or any extension thereof if he shall return to active service with the City promptly following the end of the period of such leave of absence or extension thereof. During such leave of absence or extension thereof, the Treasurer of the City shall make no deductions from the salary, if any, of such member, and such member shall not otherwise be required to make any contributions to the Association during or with respect to such period.

Sec. 27. If any person entitled to benefits under this act shall be physically or mentally incapable of receiving or acknowledging receipt of such benefits, the Trustees, upon receipt of satisfactory evidence of such incapacity and that another person or institution is maintaining such person entitled to benefits, and that no guardian or committee has been appointed for him, may cause any benefits otherwise payable to him to be made to such person or institution so maintaining him.

Sec. 28. The provisions of this act shall be administered on an equitable and nondiscriminatory basis, it being the intent hereof that where the Trustees are given discretionary powers, such powers shall be exercised in an equitable manner and so as to prevent discrimination between persons similarly situated. All assets of the Association shall be administered for the exclusive benefit of the members of the Association and their beneficiaries, and as a fund to provide for such members or beneficiaries the benefits provided in this act. It shall be impossible for any part of the principal or income of the retirement fund of the Association to be used for or diverted to purposes other than for the exclusive benefit of the members of the Association or their beneficiaries as provided in this act; except that the Trustees may use such assets to pay the reasonable expenses incurred in administering the said fund and any debts, liabilities or obligations of said fund. The assets and income of the fund shall be exempt from all taxes, including income taxes, imposed by the State of North Carolina or any political subdivision thereof.

Sec. 29. The fiscal year of the Association shall end on June 30 of each year.

Sec. 30. Throughout this act, use of the masculine pronoun shall include the feminine.

Sec. 31. If any part or section of this act shall be declared unconstitutional or invalid by the Supreme Court of North Carolina or any other court of last resort of competent jurisdiction it shall in no wise affect the remainder of this act, and the remainder shall remain in full force and effect.

Sec. 32. All the laws and clauses of laws in conflict with the provisions of this act are hereby repealed."

Sec. 2. This act shall become effective July 1, 1987.

In the General Assembly read three times and ratified this the 29th day of June, 1987.

H.B. 589

CHAPTER 509

AN ACT TO PROVIDE FOR CONTINUED COMPLIANCE WITH THE VOTING RIGHTS ACT AND TO IMPROVE THE ADMINISTRATION OF JUSTICE BY PROVIDING FOR THE ELIMINATION OF STAGGERED TERMS FOR SUPERIOR COURT JUDGES, CREATING MORE SUPERIOR COURT JUDICIAL DISTRICTS, ELIMINATING THE OFFICE OF SPECIAL SUPERIOR COURT JUDGE, AND MAKING CONFORMING CHANGES.

The General Assembly of North Carolina enacts:

TITLE I. Division of Superior Court Districts and Elimination of Staggered Terms.

Section 1. Effective beginning with the 1988 primaries and elections for election purposes and for terms of office, and effective January 1, 1989, for all other purposes, G.S. 7A-41 reads as rewritten:

"§ 7A-41. *Superior court divisions and districts; judges; ~~assistant district attorneys.~~*--(a) The counties of the State are organized into ~~four~~ judicial divisions and 34 judicial districts, and each district has the counties, and the number of regular resident superior court judges, ~~and the number of full-time assistant district attorneys~~ set forth in the following table, and for districts of less than a whole county, as set out in subsection (b) of this section:

| <u>Judicial Division</u> | <u>Judicial District</u> | <u>Counties</u> | <u>No. of Resident Judges</u> | <u>No. of Full-Time Ass't District Attorneys</u> |
|--------------------------|--------------------------|--|-------------------------------|--|
| First | 1 | Camden, Chowan, Currituck, Dare, Gates, Pasquotank, Perquimans | 2 | 5 |
| | 2 | Beaufort, Hyde, Martin, Tyrrell, Washington | 1 | 4 |
| | 3 | Carteret, Craven, Pamlico, Pitt | 2 | 8 |
| | <u>3A</u> | <u>Pitt</u> | <u>1</u> | |
| | <u>3B</u> | <u>Carteret, Craven Pamlico</u> | <u>1</u> | |
| | 4 | Duplin, Jones, Onslow, Sampson | 2 | 8 |
| | <u>4A</u> | <u>Duplin, Jones, Sampson</u> | <u>1</u> | |
| | <u>4B</u> | <u>Onslow</u> | <u>1</u> | |
| | <u>5</u> | <u>New Hanover, Pender</u> | <u>2</u> | <u>7</u> |
| | 6 | Bertie, Halifax, Hertford, Northampton | 1 | 4 |
| | <u>6A</u> | <u>Halifax</u> | <u>1</u> | |
| | <u>6B</u> | <u>Bertie, Hertford Northampton</u> | <u>1</u> | |
| | 7 | Edgecombe, Nash, Wilson | 2 | 7 |
| | <u>7A</u> | <u>Nash</u> | <u>1</u> | |
| | <u>7B</u> | <u>(part of Wilson, part of Edgecombe, see subsection (b))</u> | <u>1</u> | |
| | <u>7C</u> | <u>(part of Wilson, part of Edgecombe, see subsection (b))</u> | <u>1</u> | |
| | 8 | Greene, Lenoir Wayne | 2 | 8 |
| | <u>8A</u> | <u>Lenoir and Greene</u> | <u>1</u> | |
| | <u>8B</u> | <u>Wayne</u> | <u>1</u> | |

| | | | | |
|--------|---------------|--|--------------|---------------|
| Second | 9 | Franklin, Granville, Person, Vance, Warren | 2 | 6 |
| | 10 | Wake | 4 | 15 |
| | <u>10A</u> | <u>(part of Wake see subsection (b))</u> | <u>1</u> | |
| | <u>10B</u> | <u>(part of Wake see subsection (b))</u> | <u>2</u> | |
| | <u>10C</u> | <u>(part of Wake see subsection (b))</u> | <u>1</u> | |
| | <u>10D</u> | <u>(part of Wake see subsection (b))</u> | <u>1</u> | |
| | 11 | Harnett, Johnston, Lee | 1 | 5 |
| | 12 | Cumberland, Hoke | 3 | 12 |
| | <u>12A</u> | <u>(part of Cumberland see subsection (b))</u> | <u>1</u> | |
| | <u>12B</u> | <u>(part of Cumberland see subsection (b))</u> | <u>1</u> | |
| | <u>12C</u> | <u>(part of Cumberland see subsection (b))</u> | <u>2</u> | |
| | 13 | Bladen, Brunswick, Columbus | 1 | 5 |
| | 14 | Durham | 3 | 8 |
| | <u>14A</u> | <u>(part of Durham see subsection (b))</u> | <u>1</u> | |
| | <u>14B</u> | <u>(part of Durham see subsection (b))</u> | <u>3</u> | |
| | 15A | Alamance | 1 | 3 |
| | 15B | Orange, Chatham | 1 | 3 |
| | 16 | Robeson, Scotland | 1 | 7 |
| | <u>16A</u> | <u>Scotland, Hoke</u> | <u>1</u> | |
| | <u>16B</u> | <u>Robeson</u> | <u>1</u> | |
| Third | <u>17A</u> | <u>Caswell, Rockingham</u> | <u>1</u> | <u>3</u> |
| | <u>17B</u> | <u>Stokes, Surry</u> | <u>1</u> | <u>3</u> |
| | 18 | Guilford | 4 | 14 |
| | <u>18A</u> | <u>(part of Guilford see subsection (b))</u> | <u>1</u> | |
| | <u>18B</u> | <u>(part of Guilford see subsection (b))</u> | <u>1</u> | |
| | <u>18C</u> | <u>(part of Guilford see subsection (b))</u> | <u>1</u> | |
| | <u>18D</u> | <u>(part of Guilford see subsection (b))</u> | <u>1</u> | |

| | | | | |
|--------|----------------|--|--------------|---------------|
| | <u>18E</u> | (part of Guilford see subsection (b)) | <u>1</u> | |
| | 19A | Cabarrus, Rowan | 2 | 5 |
| | <u>19A</u> | <u>Cabarrus</u> | <u>1</u> | |
| | <u>19B</u> | <u>Montgomery, Randolph</u> | <u>1</u> | <u>3</u> |
| | <u>19C</u> | <u>Rowan</u> | <u>1</u> | |
| | 20 | Anson, Moore, Richmond, Stanly, Union | 2 | 8 |
| | <u>20A</u> | <u>Anson, Moore, Richmond</u> | <u>1</u> | |
| | <u>20B</u> | <u>Stanly, Union</u> | <u>1</u> | |
| | 21 | Forsyth | 3 | 9 |
| | <u>21A</u> | <u>(part of Forsyth see subsection (b))</u> | <u>1</u> | |
| | <u>21B</u> | <u>(part of Forsyth see subsection (b))</u> | <u>1</u> | |
| | <u>21C</u> | <u>(part of Forsyth see subsection (b))</u> | <u>1</u> | |
| | <u>21D</u> | <u>(part of Forsyth see subsection (b))</u> | <u>1</u> | |
| | <u>22</u> | <u>Alexander, Davidson Davie, Iredell</u> | <u>2</u> | <u>7</u> |
| | <u>23</u> | <u>Alleghany, Ashe, Wilkes, Yadkin</u> | <u>1</u> | <u>3</u> |
| Fourth | <u>24</u> | <u>Avery, Madison, Mitchell, Watauga, Yancey</u> | <u>1</u> | <u>3</u> |
| | 25 | Burke, Caldwell, Catawba | 2 | 7 |
| | <u>25A</u> | <u>Burke, Caldwell</u> | <u>1</u> | |
| | <u>25B</u> | <u>Catawba</u> | <u>1</u> | |
| | 26 | Mecklenburg | 5 | 19 |
| | <u>26A</u> | <u>(part of Mecklenburg see subsection (b))</u> | <u>2</u> | |
| | <u>26B</u> | <u>(part of Mecklenburg see subsection (b))</u> | <u>2</u> | |
| | <u>26C</u> | <u>(part of Mecklenburg see subsection (b))</u> | <u>2</u> | |
| | <u>27A</u> | <u>Gaston</u> | <u>2</u> | <u>5</u> |
| | <u>27B</u> | <u>Cleveland, Lincoln</u> | <u>1</u> | <u>3</u> |
| | <u>28</u> | <u>Buncombe</u> | <u>2</u> | <u>5</u> |

| | | | |
|-----|--|---|---|
| 29 | Henderson, McDowell, Polk, Rutherford, Transylvania | 1 | 5 |
| 30 | Cherokee, Clay, Graham, Haywood, Jackson, Macon, Swain | 2 | 5 |
| 30A | Cherokee, Clay, Graham, Macon, Swain | 1 | |
| 30B | Haywood, Jackson | 1 | |

(b) For judicial districts of less than a whole county, or with part of one county with part of another, the composition of the district and the number of judges is as follows:

- (1) Judicial District 7B consists of County Commissioner Districts 1, 2 and 3 of Wilson County, Blocks 127 and 128 of Census Tract 6 of Wilson County, and Townships 12 and 14 of Edgecombe County. It has one judge.
- (2) Judicial District 7C consists of the remainder of Edgecombe and Wilson Counties not in Judicial District 7B. It has one judge.
- (3) Judicial District 10A consists of Raleigh Precincts 12, 13, 14, 18, 19, 20, 22, 25, 26, 28, 34, 35, and 40, and St. Matthews #3, except that if the Wake County Board of Elections provides that the area in Raleigh Township which was incorrectly placed in a St. Mary's precinct shall be in Raleigh Precinct 40, that area shall be considered to be in Raleigh Precinct 40 for district purposes. It has one judge.
- (4) Judicial District 10B consists of Buckhorn Precinct, Cary Precincts 1, 2, 3, 4, 5, 6, and 7, Cedar Fork Precinct, Holly Springs Precinct, House Creek Precinct #1, Meredith Precinct, Middle Creek Township, Raleigh Precincts 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 16, 21, 23, 24, 27, 29, 31, 32, 33, 36, and 41, Swift Creek Precinct #1 and #2 and White Oak Township. It has two judges.
- (5) Judicial District 10C consists of Barton's Creek Precinct, Leesville Precinct, House Creek Precinct #2, Little River Township, Marks Creek Township, New Light Township, Panther Branch Township, St. Mary's Precincts #1, #2, #3, #4, #5, and #6, and Wake Forest Township. It has one judge.
- (6) Judicial District 10D consists of the remainder of Wake County not in Judicial Districts 10A, 10B or 10C. It has

- one judge.
- (7) Judicial District 12A consists of that part of Cross Creek Precinct #18 north of Raeford Road, Montclair Precinct, that part of Precinct 71-1 not in Judicial District 12B, Precinct 71-2, Morganton #2 Precinct, Cottonade Precinct, Cumberland Precincts 1 and 2, and Brentwood Precinct. It has one judge.
- (8) Judicial District 12B consists of all of State House of Representatives District 17, except for Westarea Precinct, and it also includes that part of Cross Creek Precinct #15 east of Village Drive. It has one judge.
- (9) Judicial District 12C consists of the remainder of Cumberland County not in Judicial Districts 12A or 12B. It has two judges.
- (10) Judicial District 14A consists of Durham Precincts 9, 11, 12, 13, 14, 15, 18, 34, 40, 41, and 42, and that part of Durham Precinct 39 east of North Carolina Highway #751. It has one judge.
- (11) Judicial District 14B consists of the remainder of Durham County not in Judicial District 14A. It has three judges.
- (12) Judicial District 18A consists of Greensboro Precincts 5, 6, 7, 8, 9, 19, 25, 29, 30, 44, and 45 and Clay and Fentress Precincts. It has one judge.
- (13) Judicial District 18B consists of High Point Precincts 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 20, and 21, Deep River Precinct, and Jamestown Precincts 1 and 3. It has one judge.
- (14) Judicial District 18C consists of Greensboro Precincts 20, 27, 31, 32, 34, 37, 38, 39, and 43, High Point Precinct 19, Stokesdale, Oak Ridge, Bruce, Friendship I, Friendship II, Jamestown II, South Center Grove, North Center Grove, and North Monroe Precincts. It has one judge.
- (15) Judicial District 18D consists of Greensboro Precincts 4, 11, 13, 14, 15, 16, 17, 18, 21, 22, 23, 24, 26, 36, and 42, and North and South Sumner Precincts. It has one judge.
- (16) Judicial District 18E consists of the remainder of Guilford County not in Judicial Districts 18A, 18B, 18C, or 18D. It has one judge.
- (17) Judicial District 21A consists of the Southwest Ward of Winston-Salem, and Precincts 80-6, 80-7, 80-8, 3-1, 9-1, 13-1, 13-2, 13-3, 7-1, 7-2, 7-3, 5-1, 5-2, 5-3, 12-2, and 12-3. It has one judge.

- (18) Judicial District 21B consists of the Northwest Ward, the South Ward, and the Southeast Ward of Winston-Salem, and Precincts 4-1 and 4-2. It has one judge.
 - (19) Judicial District 21C consists of Precincts 80-1, 80-2, 80-3, 80-4, 80-5, 80-9, 10-2, 10-3, 3-2, 3-3, 11-1, 11-2, 2-1, 6-1, 6-2, 6-3, 6-4, 1-1, 1-2, and 1-3. It has one judge.
 - (20) Judicial District 21D consists of the North Ward, the Northeast Ward, and the East Ward of Winston-Salem, and Precincts 8-2 and 8-3. It has one judge.
 - (21) Judicial District 26A consists of Charlotte Precincts 11, 12, 13, 14, 15, 16, 22, 23, 24, 25, 26, 27, 31, 33, 39, 41, 42, 46, 52, 54, 55, 56, 58, 60, 77, 78, and 82, and Long Creek Precinct #2 of Mecklenburg County. It has two judges.
 - (22) Judicial District 26B consists of Charlotte Precincts 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 17, 18, 20, 21, 28, 29, 30, 32, 34, 35, 36, 37, 38, 43, 44, 45, 47, 51, 61, 62, 63, 65, 66, 67, 68, 69, 71, 74, 83, 84, and 86, Crab Orchard Precincts 1 and 2, and Mallard Creek Precinct 1. It has two judges.
 - (23) Judicial District 26C consists of the remainder of Mecklenburg County not in Judicial Districts 26A or 26B. It has two judges.
- (c) In subsection (b) above:
- (1) the names and boundaries of townships are as they were legally defined and in effect as of January 1, 1980, and recognized in the 1980 U.S. Census;
 - (2) for Guilford County, precinct boundaries are as shown on maps in use by the Guilford County Board of Elections on April 15, 1987,
 - (3) for Mecklenburg, Wake, and Durham Counties, precinct boundaries are as shown on the current maps in use by the appropriate county board of elections as of January 31, 1984, in accordance with G.S. 163-128(b); and
 - (4) for Wilson County, commissioner districts are those in use for election of members of the county board of commissioners as of January 1, 1987.
 - (5) for Cumberland County, House District 17 is in accordance with the boundaries in effect on January 1, 1987. Precincts are in accordance with those as approved by the United States Department of Justice on February 28, 1986.
 - (6) for Forsyth County, the boundaries of Wards and precincts are those in effect on 'WARD MAP 1985', published November 1985 by the City of Winston-Salem and Forsyth County.

If any changes in precinct boundaries, wards, commissioner districts, or House of Representative districts have been made since the dates specified, or are made, those changes shall not change the boundaries of the judicial districts.

(d) The several judges, their terms of office, and their assignments to districts are as follows:

- (1) In the first judicial district, J. Herbert Small and Thomas S. Watts serve terms expiring December 31, 1994.
- (2) In the second judicial district, William C. Griffin serves a term expiring December 31, 1994.
- (3) In the third-A judicial district, David E. Reid serves a term expiring on December 31, 1992.
- (4) In the third-B judicial district, Herbert O. Phillips, III, serves a term expiring on December 31, 1994.
- (5) In the fourth-A judicial district, Henry L. Stevens, III, serves a term expiring December 31, 1994.
- (6) In the fourth-B judicial district, James R. Strickland serves a term expiring December 31, 1992.
- (7) In the fifth judicial district, no election shall be held in 1992 for the full term of the seat now occupied by Bradford Tillery, and the holder of that seat shall serve until a successor is elected in 1994 and qualifies. The succeeding term begins January 1, 1995. In the fifth judicial district, Napoleon B. Barefoot serves a term expiring December 31, 1994.
- (8) In the sixth-A judicial district, Richard B. Allsbrook serves a term expiring December 31, 1990.
- (9) In the sixth-B judicial district, a judge shall be elected in 1988 to serve an eight-year term beginning January 1, 1989.
- (10) In the seventh-A judicial district, Charles B. Winberry, serves a term expiring December 31, 1994.
- (11) In the seventh-B judicial district, a judge shall be elected in 1988 to serve an eight-year term beginning January 1, 1989.
- (12) In the seventh-C judicial district, Franklin R. Brown serves a term expiring December 31, 1990.
- (13) In the eighth-A judicial district, James D. Llewellyn serves a term expiring December 31, 1994.
- (14) In the eighth-B judicial district, Paul M. Wright serves a term expiring December 31, 1992.
- (15) In the ninth judicial district, Robert H. Hobgood and Henry W. Hight, Jr., serve terms expiring December 31, 1994.

- (16) In the tenth-A judicial district, a judge shall be elected in 1988 to serve an eight-year term beginning January 1, 1989.
- (17) In the tenth-B judicial district, Robert L. Farmer serves a term expiring December 31, 1992. In the tenth-B judicial district, no election shall be held in 1990 for the full term of the seat now occupied by Henry V. Barnette, Jr., and the holder of that seat shall serve until a successor is elected in 1992 and qualifies. The succeeding term begins January 1, 1993.
- (18) In the tenth-C judicial district, Edwin S. Preston, serves a term expiring December 31, 1990. In the tenth-D judicial district, Donald Stephens serves a term expiring December 31, 1988.
- (19) In the eleventh judicial district, Wiley F. Bowen serves a term expiring December 31, 1990.
- (20) In the twelfth-A judicial district, D.B. Herring, Jr., serves a term expiring December 31, 1990.
- (21) In the twelfth-B judicial district, a judge shall be elected in 1988 to serve an eight-year term beginning January 1, 1989.
- (22) In the twelfth-C judicial district, no election shall be held in 1992 for the full term of the seat now occupied by Coy E. Brewer, Jr., and the holder of that seat shall serve until a successor is elected in 1994 and qualifies. The succeeding term begins January 1, 1995. In the twelfth-C judicial district, E. Lynn Johnson serves a term expiring December 31, 1994.
- (23) In the thirteenth judicial district, Giles R. Clark serves a term expiring December 31, 1994.
- (24) In the fourteenth-A judicial district, a judge shall be elected in 1988 to serve an eight-year term beginning January 1, 1989.
- (25) In the fourteenth-B judicial district, no election shall be held in 1992 for the full term of the seat now occupied by Anthony M. Brannon, and the holder of that seat shall serve until a successor is elected in 1994 and qualifies. The succeeding term begins July 1, 1995.
- (26) In the fourteenth-B judicial district, no election shall be held in 1990 for the full term of the seat now occupied by Thomas H. Lee, and the holder of that seat shall serve until a successor is elected in 1994 and qualifies. The succeeding term begins January 1, 1995. In the

- fourteenth-B judicial district, J. Milton Read, Jr., serves a term expiring December 31, 1994.
- (27) In the fifteenth-A judicial district, J.B. Allen, Jr., serves a term expiring December 31, 1994.
- (28) In the fifteenth-B judicial district, F. Gordon Battle serves a term expiring December 31, 1994.
- (29) In the sixteenth-A judicial district, B. Craig Ellis serves a term expiring December 31, 1994.
- (30) In the sixteenth-B judicial district, a judge shall be elected in 1988 to serve an eight-year term beginning January 1, 1989.
- (31) In the seventeenth-A judicial district, Melzer A. Morgan, Jr., serves a term expiring December 31, 1990.
- (32) In the seventeenth-B judicial district, James M. Long serves a term expiring December 31, 1994.
- (33) In the eighteenth-A judicial district, a judge shall be elected in 1988 to serve an eight-year term beginning January 1, 1989.
- (34) In the eighteenth-B judicial district, Edward K. Washington's term expired December 31, 1986, but he is holding over because of a court order enjoining an election from being held in 1986. A successor shall be elected in 1988 to serve an eight-year term beginning January 1, 1989.
- (35) In the eighteenth-C judicial district, W. Douglas Albright serves a term expiring December 31, 1990.
- (36) In the eighteenth-D judicial district, Thomas W. Ross's term expired December 31, 1986, but he is holding over because of a court order enjoining an election from being held in 1986. A successor shall be elected in 1988 to serve an eight-year term beginning January 1, 1989.
- (37) In the eighteenth-E judicial district, Joseph John's term expired December 31, 1986, but he is holding over because of a court order enjoining an election from being held in 1986. A successor shall be elected in 1988 to serve an eight-year term beginning January 1, 1989.
- (38) In the nineteenth-A judicial district, James C. Davis serves a term expiring December 31, 1992.
- (39) In the nineteenth-B judicial district, Russell G. Walker, Jr., serves a term expiring December 31, 1990.
- (40) In the nineteenth-C judicial district, Thomas W. Seay, Jr., serves a term expiring December 31, 1990.
- (41) In the twentieth-A judicial district, F. Fetzer Mills serves a term expiring December 31, 1992.

- (42) In the twentieth-B judicial district, William H. Helms serves a term expiring December 31, 1990.
- (43) In the twenty-first-A judicial district, William Z. Wood serves a term expiring December 31, 1990.
- (44) In the twenty-first-B judicial district, Judson D. DeRamus, Jr., serves a term expiring December 31, 1988.
- (45) In the twenty-first-C judicial district, William H. Freeman serves a term expiring December 31, 1990.
- (46) In the twenty-first-D judicial district, a judge shall be elected in 1988 to serve an eight-year term beginning January 1, 1989.
- (47) In the twenty-second judicial district, no election shall be held in 1992 for the full term of the seat now occupied by Preston Cornelius, and the holder of that seat shall serve until a successor is elected in 1994 and qualifies. The succeeding term shall begin January 1, 1995. In the twenty-second judicial district, Robert A. Collier serves a term expiring December 31, 1994.
- (48) In the twenty-third judicial district, Julius A. Rousseau, Jr., serves a term expiring December 31, 1990.
- (49) In the twenty-fourth judicial district, Charles C. Lamm, Jr., serves a term expiring December 31, 1994.
- (50) In the twenty-fifth-A judicial district, Claude S. Sitton serves a term expiring December 31, 1994.
- (51) In the twenty-fifth-B judicial district, Forrest A. Ferrell serves a term expiring December 31, 1990.
- (52) In the twenty-sixth-A judicial district, no election shall be held in 1994 for the full term of the seat now occupied by W. Terry Sherrill, and the holder of that seat shall serve until a successor is elected in 1996 and qualifies. The succeeding term shall begin January 1, 1997. In the twenty-sixth-A judicial district, a judge shall be elected in 1988 to serve an eight-year term beginning January 1, 1989.
- (53) In the twenty-sixth-B judicial district, Frank W. Snepp, Jr., and Kenneth A. Griffin serve terms expiring December 31, 1990.
- (54) In the twenty-sixth-C judicial district, no election shall be held in 1992 for the full term of the seat now occupied by Chase Boone Saunders, and the holder of that seat shall serve until a successor is elected in 1994 and qualifies. The succeeding term shall begin January 1, 1995. In the twenty-seventh-C judicial district, Robert M. Burroughs serves a term expiring December 31, 1994.

- (55) In the twenty-seventh-A judicial district, no election shall be held in 1988 for the full term of the seat now occupied by Robert E. Gaines, and the holder of that seat shall serve until a successor is elected in 1990 and qualifies. The succeeding term begins January 1, 1991. In the twenty-seventh-A judicial district, Robert W. Kirby serves a term expiring December 31, 1990.
- (56) In the twenty-seventh-B judicial district, John M. Gardner serves a term expiring December 31, 1994.
- (57) In the twenty-eighth judicial district, Robert D. Lewis and C. Walter Allen serve terms expiring December 31, 1990.
- (58) In the twenty-ninth judicial district, Hollis M. Owens, Jr., serves a term expiring December 31, 1990.
- (59) In the thirtieth-A judicial district, James U. Downs serves a term expiring December 31, 1990.
- (60) In the thirtieth-B judicial district, Janet M. Hyatt serves a term expiring December 31, 1994.

(e) In a district having more than one regular resident judge where the district consists of all of a county or all of several counties, the judge who has the most continuous service on the superior court is the senior regular resident superior court judge. If two judges are of equal seniority, the oldest judge is the senior regular resident judge. In a single-judge district, where the district consists of all of a county or all of several counties, the single judge is the senior regular resident judge.

In any county where there is more than one judicial district, but the districts include only territory from that county, then from all of the districts in that county, the judge who has the most continuous service on the superior court is the senior regular resident superior court judge for all of those districts and for the county. If two judges are of equal seniority, the oldest judge is the senior regular resident judge for all of those districts and for the county.

In any county where there is more than one judicial district, and the districts include part from that county, and part from another county, then from all of the districts in both those counties, the judge who has the most continuous service on the superior court is the senior regular resident superior court judge for all of those districts and for both counties. If two judges are of equal seniority, the oldest judge is the senior regular resident judge for all of those districts and for both counties.

Senior regular resident judges and regular resident judges possess equal judicial jurisdiction, power, authority and status, but all duties placed by the Constitution or statutes on the resident judge of a

judicial district, including the appointment to and removal from office, which are not related to a case, controversy or judicial proceeding and which do not involve the exercise of judicial power, shall be discharged by the senior regular resident judge. A senior regular resident superior court judge in a multi-judge district, by notice in writing to the Administrative Officer of the Courts, may decline to exercise the authority vested in him by this section, in which event such authority shall be exercised by the regular resident judge next senior in point of service or age, respectively.

In the event the senior regular resident judge of a multi-judge district is unable, due to mental or physical incapacity, to exercise the authority vested in him by the statute, and the Chief Justice, in his discretion, has determined that such incapacity exists, the Chief Justice shall appoint an acting senior regular resident judge from the other regular resident judges of the district, to exercise, temporarily, the authority of the senior regular resident judge; provided that in any county where there is more than one judicial district, the appointment may be made of any of the other regular resident judges of any district in that county. Such appointee shall serve at the pleasure of the Chief Justice and until his temporary appointment is vacated by appropriate order."

Sec. 2. Effective January 1, 1989, Article 7 of Chapter 7A of the General Statutes is amended by adding a new section to read:

" § 7A-47.2. *Jurisdiction of superior court judges.*-- Notwithstanding any other provision of law, in addition to any other jurisdiction granted by law, a superior court judge of a district has jurisdiction in the entire county or counties in which the district is located, and a superior court judge holding court in a district has jurisdiction in the entire county or counties in which the district is located."

Sec. 3. Effective January 1, 1989, Article 7 of Chapter 7A of the General Statutes is amended by adding a new section to read:

" § 7A-47.3. *Assignment of judges in certain districts.*--When a county is divided into more than one district, and judges are assigned to hold court, assignments shall be made for the county as a whole, for the superior court of that county."

TITLE II. Prosecutorial Districts Not Changed.

Sec. 4. Effective July 1, 1987, G.S. 7A-60(a) reads as rewritten:

"(a) Except as provided in subsection (b), effective January 1, 1971, the State shall be divided into prosecutorial districts, ~~the numbers and boundaries of which shall be identical with those of the superior and district court judicial districts, except as provided in this~~

section, as shown in subsection (a1) of this section. In the general election of November 1970, a district attorney shall be elected for a four-year term for each prosecutorial district. The district attorney shall be a resident of the district for which elected, and shall take office on January 1 following the election. A vacancy in the office of district attorney shall be filled as provided in Article IV, Sec. 19 of the Constitution."

Sec. 5. Effective July 1, 1987, G.S. 7A-60 is amended by adding a new subsection to read:

"(a1) The counties of the State are organized into prosecutorial districts, and each district has the counties and the number of full-time assistant district attorneys set forth in the following table:

| Judicial District | Counties | No. of Full-Time Asst. District Attorneys |
|----------------------|--|---|
| 1 | Camden, Chowan, Currituck, Dare, Gates, Pasquotank, Perquimans | 5 |
| 2 | Beaufort, Hyde, Martin, Tyrrell, Washington | 4 |
| 3A | Pitt | 4 |
| 3B | Carteret, Craven, Pamlico | 4 |
| 4 | Duplin, Jones, Onslow, Sampson | 8 |
| 5 | New Hanover, Pender | 7 |
| 6 | Bertie, Halifax, Hertford, Northampton | 4 |
| 7 | Edgecombe, Nash, Wilson | 7 |
| 8 | Greene, Lenoir, Wayne | 8 |
| 9 | Franklin, Granville, Person, Vance, Warren | 6 |
| 10 | Wake | 15 |
| 11 | Harnett, Johnston, Lee | 5 |
| 12 | Cumberland, Hoke | 12 |
| 13 | Bladen, Brunswick, Columbus | 5 |
| 14 | Durham | 8 |
| 15A | Alamance | 3 |
| 15B | Orange, Chatham | 3 |
| 16 | Robeson, Scotland | 7 |
| 17A | Caswell, Rockingham | 3 |
| 17B | Stokes, Surry | 3 |

| | | |
|-----|--|----|
| 18 | Guilford | 14 |
| 19A | Cabarrus, Rowan | 5 |
| 19B | Montgomery, Randolph | 3 |
| 20 | Anson, Moore, Richmond, Stanly, Union | 8 |
| 21 | Forsyth | 9 |
| 22 | Alexander, Davidson, Davie, Iredell | 7 |
| 23 | Alleghany, Ashe, Wilkes, Yadkin | 3 |
| 24 | Avery, Madison, Mitchell, Watauga, Yancey | 3 |
| 25 | Burke, Caldwell, Catawba | 7 |
| 26 | Mecklenburg | 19 |
| 27A | Gaston | 5 |
| 27B | Cleveland, Lincoln | 3 |
| 28 | Buncombe | 5 |
| 29 | Henderson, McDowell, Polk, Rutherford, Transylvania | 5 |
| 30 | Cherokee, Clay, Graham, Haywood, Jackson, Macon, Swain." | 5 |

TITLE III. Elimination of Special Superior Court Judges.

Sec. 6. Effective upon ratification, G.S. 7A-45 reads as rewritten:

" § 7A-45. *Special judges; appointment; removal; vacancies; authority.*-

-(a) The Governor may appoint eight special superior court judges except as provided by this subsection. A special judge takes the same oath of office and is subject to the same requirements and disabilities as is or may be prescribed by law for regular judges of the superior court, save the requirement of residence in a particular district. Initial appointments made under this section shall be to terms of office beginning July 1, 1967, and expiring June 30, 1971. As the terms expire, the Governor may appoint successors for terms of four years each, except that terms beginning July 1, 1987, shall expire December 31, 1988; provided that if any judge serving as a special superior court judge on December 31, 1988, is to become first eligible for service retirement under G.S. 135-57 between December 31, 1988, and July 1, 1989, the term of that judge shall expire on that eligibility date, and except that if any special superior court judge who is holding office on June 30, 1987, has five years of membership service under G.S. 135-53(12) on that date, or will have three years of such service

on or before December 1, 1987 if continued in office, the term of office of that judge is extended through December 31, 1988. All incumbents shall continue in office until their successors are appointed and qualify.

(b) A special judge is subject to removal from office for the same causes and in the same manner as a regular judge of the superior court, and a vacancy occurring in the office of special judge is filled by the Governor by appointment for the unexpired term.

(c) A special judge, in any court in which he is duly appointed to hold, has the same power and authority in all matters whatsoever that a regular judge holding the same court would have. A special judge, duly assigned to hold the court of a particular county, has during the session of court in that county, in open court and in chambers, the same power and authority of a regular judge in all matters whatsoever arising in that judicial district that could properly be heard or determined by a regular judge holding the same session of court.

(d) A special judge is authorized to settle cases on appeal and to make all proper orders in regard thereto after the time for which he was commissioned has expired."

Sec. 7. Effective January 1, 1989, G.S. 7A-45 is repealed, except that as to any judge continuing to serve under the proviso of G.S. 7A-45(a) added by this act, G.S. 7A-45 is repealed on the eligibility date for retirement set forth in the proviso.

Sec. 8. Notwithstanding G.S. 7A-44.1, the provisions of Section 1 of this act, which have the effect of adding new positions of senior regular superior court judge, do not authorize any additional positions as judicial secretaries. Additional secretaries shall only be provided to the extent funds are appropriated.

TITLE IV. Conforming Election Law Changes.

Sec. 9. Effective upon ratification, Chapter 987, Session Laws of 1985, is repealed.

Sec. 10. Effective with respect to vacancies in nomination occurring on or after January 1, 1988, G.S. 163-114 reads as rewritten:

"§ 163-114. *Filling vacancies among party nominees occurring after nomination and before election.*--If any person nominated as a candidate of a political party for one of the offices listed below (either in a primary or convention or by virtue of having no opposition in a primary) dies, resigns, or for any reason becomes ineligible or disqualified before the date of the ensuing general election, the vacancy shall be filled by appointment according to the following instructions:

| | |
|---|--|
| Position Any elective State office United States Senator | Vacancy is to be filled by appointment of State executive committee of political party in which vacancy occurs |
| A district office, including: Member of the United States House of Representatives Judge of superior court Judge of district court Solicitor State Senator in a multi- county senatorial district Member of State House of Representatives in a multi- county representative district | Appropriate district executive committee of political party in which vacancy occurs |
| State Senator in a single- county senatorial district Member of State House of Representatives in a single-county representative district Any elective county office | County executive committee of political party in which vacancy occurs, but if the vacancy arises from a cause other than death, the vacancy shall not be filled unless the board of elections in the county in which the vacancy occurs issues an order to that effect, provided, in the case of the State Senator or State Representative in a single-county district where not all the county is located in that district, then in voting, only those members of the county executive committee who reside within the district shall vote, <u>vote</u> |

Judge of Superior Court in a
single-county judicial
district where the district
is the whole county or part
of the county

County executive committee
of political party in
which vacancy occurs;
provided, in the case of
a superior court judge in a
single-county district where
not all the county is
located in that district,
then in voting, only those
members of the county
executive committee who
reside within the
district shall vote

Judge of Superior Court in a
multi-county judicial
district

Appropriate district
executive committee of
political party in which
vacancy occurs.

The party executive making a nomination in accordance with the provisions of this section shall certify the name of its nominee to the chairman of the board of elections, State or county, charged with the duty of printing the ballots on which the name is to appear. If at the time a nomination is made under this section the general election ballots have already been printed, the provisions of G.S. 163-139 shall apply.

In a county which is partly in a multi-county judicial district, in choosing that county's member or members of the judicial district executive committee for the multi-county district, only the county convention delegates or county executive committee members who reside within the area of the county which is within that multi-county district may vote.

In a county not all of which is located in one congressional district, in choosing the congressional district executive committee member or members from that area of the county, only the county convention delegates or county executive committee members who reside within the area of the county which is within the congressional district may vote.

In a county which is partly in a multi-county senatorial district or which is partly in a multi-county House of Representatives district, in choosing that county's member or members of the senatorial district executive committee or House of Representatives district executive committee for the multi-county district, only the county convention delegates or county executive committee members who reside within

the area of the county which is within that multi-county district may vote."

Sec. 11. The Legislative Research Commission shall report to the 1987 General Assembly, Regular Session 1988, any necessary conforming amendments to implement this act.

Sec. 12. Except for Sections 4, 5, 6, 9, 12, 15 and 16, this act shall only become effective if funds are appropriated to implement this act. It is the intent of the General Assembly to review this question during consideration of the Expansion Budget request of the Administrative Office of the Courts.

Sec. 13. G.S. 163-106 is amended by adding a new subsection to read:

"(i) No person may file a notice of candidacy for superior court judge unless that person is at the time of filing the notice of candidacy a resident of the judicial district as it will exist at the time the person would take office if elected. No person may be nominated as a superior court judge under G.S. 163-114 unless that person is at the time of nomination a resident of the judicial district as it will exist at the time the person would take office if elected. This subsection implements Article IV Section 9 (1) of the North Carolina Constitution which requires regular Superior Court Judges to reside in the district for which elected."

Sec. 14. G.S. 7A-130 reads as rewritten:

"§ 7A-130. *Creation of district court division and district court districts; seats of court.*--The district court division of the General Court of Justice is hereby created. It consists of various district courts organized in territorial districts. The numbers and boundaries of the districts are ~~identical to those of the superior court judicial districts as provided by G.S. 7A-133.~~ The district court shall sit in the county seat of each county, and at such additional places in each county as the General Assembly may authorize, except that sessions of court are not required at an additional seat of court unless the chief district judge and the Administrative Officer of the Courts concur in a finding that the facilities are adequate."

Sec. 15. If any provision of this act is held invalid by a court of competent jurisdiction, such holding shall not affect the validity of the remainder of this act, so that its provisions are severable.

Sec. 16. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 29th day of June, 1987.

AN ACT TO EXTEND THE CORPORATE LIMITS OF THE TOWN OF HILLSBOROUGH.

The General Assembly of North Carolina enacts:

Section 1. The corporate limits of the Town of Hillsborough are hereby extended by annexation of property in two Phases provided by Sections 2 and 3 of this act.

Sec. 2. Phase I: Annexation of all property within the boundary more specifically described as follows shall be effective on August 31, 1987:

Byrd's Tract

BEGINNING at a point located on the north side of U.S. Highway 70, the southwestern corner of the Hilda M. Brady Property as described in Book 271, Page 1070, of the Orange County Registry, and running thence the following courses and distances:

(1) South 74-47-18 East 370 feet to a stake in the centerline of U.S. Highway 70; thence

(2) North 04-09-44 East 347.84 feet to an iron stake; thence

(3) North 82-25-24 West 349.69 feet to an iron stake; thence

(4) South 06-52-12 East 298.14 feet to an iron stake, the point and place of BEGINNING.

McDonald's Tract

BEGINNING at a steel spike, said steel spike having North Carolina Grid Coordinates X=1,969,087.320 Y=839,227.018; and being located at the intersection of the southernmost right-of-way line, extended, of Interstate 85 and the centerline of NCSR 1009, and running thence the following courses and distances:

(1) South 05-45-10 West with the centerline of NCSR 1009 a distance of 36.82 feet to a spike; thence

(2) South 03-13-27 West with the centerline of NCSR 1009 a distance of 99.90 feet to a spike; thence

(3) South 00-11-18 West with the centerline of NCSR 1009 a distance of 106.00 feet to a P.K. Nail; thence

(4) South 01-02-42 East with the centerline of NCSR 1009 a distance of 12.12 feet to a P.K. Nail; thence

(5) North 80-30 West 226.89 feet to a stake, the southwestern corner of the McDonald's Property; thence

(6) North 08-06 East 296.31 feet to a point, the southeast corner of the John S. Harder Property described in Book 385, Page 545, Orange County Registry; thence

(7) North 53-40 West 216.0 feet to a stake, the southwest corner of the Harder Property; thence

(8) North 08-57 East 67.43 feet to a stake in the southern right-of-way of Interstate 85; thence

(9) South 53-40 East 211.41 feet to a part in the southern right-of-way of Interstate 85, the northwestern corner of the McDonald's Property; thence

(10) South 53-40 East 248.11 feet, more or less to the point and place of BEGINNING.

Harder Tract

Being 22.45 acres, more or less, located on the south side of Interstate 85, as shown on that certain plat of survey entitled "Property of Jon S. Harder and Powers, Inc." recorded in Plat Book 36, Page 38, Orange County Registry, reference to which is hereby made for a more particular description of same.

Eno River Tract

BEGINNING at a point located along the southern property line of Hillsborough Street at the northeast corner of the Property of the Orange County Board of Education, described in Book 142, Page 557, Orange County Registry, and running thence the following courses and distances:

(1) South 07-22 East 698.2 feet to a stake; thence

(2) South 32-47 East 264.0 feet to a stake; thence

(3) South 06-01 East 380.0 feet to a stake at the northeast corner of the property, now or formerly, of Rebecca B. Wall; thence

(4) South 11-36-25 East 172.60 feet to the centerline of the Eno River; thence

(5) Along the centerline of the Eno River as it meanders in a northeastern, then southern direction, along the properties of the Town of Hillsborough (see Book 252, Page 662), W.H. Brady Co., (see Book 313, Page 623), and William H.G. France et al. (see Book 468, Page 293), to the Northern property line of Annie E. Bailey Primm; thence

(6) Along the northern property line of Tract 13 of the Occoneechee Farm (Plae Book 1, Page 34), North 84-10 West 62.0 feet to a point; thence

(7) North 51-00 West 235 feet to a point; thence

(8) South 72-25 West 554 feet to a point; thence

(9) South 72-25 West 468 feet to a point; thence

(10) South 06-00 West 1,760 feet to a point in the northern property line of U.S. Highway 70-A; thence

(11) In a southern direction 100 feet to a point in the southern property line of U.S. Highway 70-A and the northern property line of Hines Liner Company, Inc; thence

(12) In a western direction along the southern property line of Route 70-A approximately 900 feet to a culvert for Cates Creek, the northeastern property line of Edward Towson Moore and Thomas

George Wilson, described in Book 282, Page 484, Orange County Registry; thence along the east side of Cates Creek, the following courses and distances:

- (13) South 38-47 West 162.78 feet; thence
- (14) South 31-45 West 349.50 feet; thence
- (15) South 10-49-30 West 138.92 feet; thence
- (16) South 42-45-30 West 310.68 feet; thence
- (17) South 78-35-30 West 123.90 feet; thence
- (18) South 72-52-30 West 43.60 feet to a stake; thence
- (19) South 72-52-30 West 187.92 feet to an iron stake; thence
- (20) South 75-11-30 West 237.57 feet to an iron stake; thence
- (21) South 38-33 West 220.35 feet to an iron stake; thence
- (22) South 23-10-10 West 410.47 feet to an iron stake in the eastern property line of White Furniture Company; thence
- (23) South 09-30 West approximately 550 feet to the eastern right-of-way of Southern Railroad; thence
- (24) Along the eastern right-of-way of Southern Railroad in a northern and western direction approximately 1,800 feet to a point at the southeastern corner of the Property of J. Frank Ray; thence
- (25) North 26-53-36 East 17.55 to a point; thence
- (26) South 83-51-24 East 106.64 feet to an iron, the western property line of White Furniture Co.; thence
- (27) North 09-34-07 East 179.17 to a point in the centerline of Route 70-A; thence
- (28) In a southeastern direction along the centerline of Route 70-A, approximately 1,400 feet to a point; thence along the western property line of a private road, extended:
- (29) North 04-47-40 East 224.34 feet to a point; thence
- (30) North 05-47 East 484.50 feet to a point; thence
- (31) North 05-47 East 65 feet to a point; thence
- (32) North 05-47 East 253.0 feet to a point; thence
- (33) South 76-15 West 274.0 feet to a point; thence
- (34) North 79-01 West 148.66 feet to a point; thence
- (35) North 02-10-13 West approximately 500 feet to a centerline of the Eno River; thence
- (36) Along the Eno River as it meanders in a western direction along the Properties of Samuel F. Ray, James H. Culbreth, Jr., and Lucius M. Cheshire, Jr., to the eastern property line of S. Cameron Street; thence along the eastern property line of Cameron Street:
- (37) North 00-44 East 290.58 feet to an iron pin set at the southeast intersection of S. Cameron Street and Burnside Drive; thence

(38) North 00-44-42 East 60.40 feet across Burnside Drive to an iron pin set at the northeast corner of said intersection; thence

(39) North 00-44-42 East 300.02 feet to an iron pin along the eastern right-of-way of S. Cameron Street; thence

(40) North 00-47-42 East 179.79 feet to an iron pin along the eastern right-of-way of S. Cameron Street; thence

(41) North 00-54-31 East 296.35 feet to an iron pin along the eastern Hillsborough (St. Mary's) Road,

(42) North 04-43 East 417.7 feet to a point, the southwestern corner of the Property of the Vestry of St. Matthews Episcopal Church; thence

(43) In a northern and eastern direction along the centerline of Hillsborough (St. Mary's) Road approximately 960 feet to the northwest corner of the property of the Orange County Board of Education; thence

(44) North 72-28 East 452.5 feet to a point, the northwestern corner, extended, of the property of A.H. Graham, the point and place of BEGINNING.

Sec. 3. Phase II: Annexation of all property within the boundary more specifically described as follows shall be effective on June 30, 1988:

Harper Street Tract

BEGINNING at a point located along the eastern property line of Harper Street, said point also being the northwestern corner of Lot 4 of North Dixie, Section 2, as shown on plat of survey recorded in Plat Book 41, Page 173 of the Orange County Registry, and running thence

(1) South 72-00-48 East 202.77 feet to a point; thence

(2) South 04-32-00 West 327.93 feet to a point; thence

(3) South 01-22-32 West 347.75 feet to a point; thence

(4) South 29-69-25 East 94.68 feet to a point; thence

(5) South 11-02-25 East 109.57 feet to a point; thence

(6) South 24-48-25 East 122.69 feet to a point; thence

(7) South 31-09-25 East approximately 155.92 feet to a point in the centerline of Dixie Avenue, extended; thence

(8) In a southwestern direction to the southwestern intersection of the southern property line of Dixie Avenue and the western property line of Old Cedar Grove Road; thence

(9) South 20-22 East approximately 212 feet to a point; thence

(10) In a clockwise direction along a curve with a radius of 465 feet an arc distance of 227.0 feet to the northern property line of Riddle Avenue; thence

(11) South 03-48 East approximately 60 feet to a point in the southern property line of Riddle Avenue; thence

(12) South 03-48 East 311.0 feet to a point in the northern property line of Homemont Avenue; thence

(13) South 03-48 East approximately 60 feet to a point in the southern property line of Homemont Avenue; thence

(14) South 03-48 East 280.5 feet along a curve leading from Old Cedar Grove Road to Harper Street; thence

(15) In a southeastern direction approximately 100 feet to a point in the eastern property line of Lot 48 of the "Lozzie Watkins Property" as shown on plat of survey recorded in Plat Book 3, Page 172 of the Orange County Registry; thence

(16) In a southeastern direction approximately 275 feet to a point in the eastern property line of Lot 47 of the "Lozzie Watkins Property"; thence

(17) In an eastern direction approximately 200 feet to a point; thence

(18) South 86-30 East 1,480 feet to a point; thence

(19) South 15-30 East 550 feet to a point; thence

(20) In a southern direction 200 feet to a point; thence

(21) South 15-00 West 425 feet to a point; thence

(22) In a northwestern direction along the northern property lines of lots 8, 7, 6, 5, 4, 3, 2 and 1 of Homemont (as shown in Plat Book 4, Page 126, Orange County Registry), 215 feet to the centerline of Spring Drive; thence

(23) South 15-00 West 150 feet along the centerline of Spring Drive to the centerline of Lawndale (Old Cornwallis) Road; thence

(24) North 53-30 West 102 feet to a point along the centerline of Lawndale Road; thence

(25) North 420-- West approximately 400 feet to a point in the centerline of Lawndale Road; thence

(26) South 39-00 West 460 feet to the centerline of Old Cedar Grove Road; thence

(27) Along the centerline of Old Cedar Grove Road in a northwestern direction approximately 260 feet to a point; thence

(28) North 89-00 West 340 feet to the centerline of Hill Street; thence

(29) In a northwestern direction along the centerline of Hill Street, approximately 60 feet to a point; thence

(30) South 40-00 West 165 feet to a point; thence

(31) North 11-00 West 104 feet to a point; thence

(32) North 11-00 West approximately 35 feet to a point; thence

(33) South 88-30 West 400 feet to a point; thence

(34) South 03-50 West approximately 87.5 feet to a point, the Southeastern corner of Lot 13 of Fairview as shown on plat of survey recorded in Plat Book 3, Page 19, Orange County Registry; thence

- (35) North 63-27 West 84 feet to a point; thence
- (36) North 64-30 West 104 feet to a point; thence
- (37) South 01-11 West 91.2 feet to a point; thence
- (38) South 14-00 West approximately 51.5 feet to a point; thence
- (39) North 82-26 West approximately 167 feet to the centerline of Faucette Mill Road; thence
- (40) North 63-39 West 210 feet to a point; thence
- (41) North 22-44 East 80 feet to a point; thence
- (42) North 77 West approximately 374.5 feet to a point; thence
- (43) North 87-30 West approximately 420 feet to a point, the southwestern corner of the Property of Nancy Jones Justice (described in Book 540, Page 234) and the southeastern corner of an old cemetery lot; thence
- (44) North 05-49-19 East 362.72 feet to a stone (per Plat Book 29, Page 150); thence
- (45) South 84-10-41 East 105 feet to a stake; thence
- (46) North 05-49-19 East 1,058.84 feet to a point at the southern property line of Faucette Mill Road; thence
- (47) South 71-15 East 180 feet to a point in the western property line of Day Street; thence
- (48) In a southeastern direction across Day Street approximately 60 feet to the northwestern corner of Lot 1 (described in Deed Book 149, Page 255); thence
- (49) South 53-20 East 175 feet to a stake on the south side of Faucette Mill Road; thence
- (50) In a northern direction approximately 45 feet to the north side of Faucette Mill Road, the southwestern corner of Lot 1 as shown on plat of survey recorded in Plat Book 3, Page 172, Orange County Registry; thence
- (51) In a northern direction 236 feet to a point; thence
- (52) North 07-37 East 865 feet to a stake, the northwestern corner of Lot 37 as shown on plat of survey recorded in Plat Book 11, Page 74; thence
- (53) North 05-08-40 East 82.58 feet to a point; thence
- (54) North 87-07-28 West 20.91 feet to a point; thence
- (55) North 42-00-54 East 145.29 feet to a point; thence
- (56) Clockwise along a curve with a radius of 50 feet to an arc distance of 114.32 feet; thence
- (57) North 06-59-01 West 110.52 feet to a point; thence
- (58) North 64-07-55 West 64.74 feet to a point; thence
- (59) North 25-52-05 East 150.0 feet to a point in the southern property line of Lower Loop; thence

(60) In a northeastern direction 50 feet across Lower Loop to the southeastern corner of Lot 11 as shown on plat of survey recorded in Plat Book 43, Page 77; thence

(61) North 27-15-16 East 151.39 feet to a point; thence

(62) North 64-07-55 West 52.08 feet to a point; thence

(63) North 42-47-21 East 108.96 feet to a point; thence

(64) North 18-20-27 West 45.0 feet to a point; thence

(65) Counterclockwise along a curve with a radius of 275.0 feet an arc distance of 10.53 feet to a point; thence

(66) Clockwise along a curve with a radius of 300.00 feet an arc distance of 129.75 feet to a point; thence

(67) South 02-09-30 West 69.75 feet to a point; thence

(68) North 07-42-19 East 189.92 feet to a point; thence

(69) South 14-16-01 West 70.85 feet to a point; thence

(70) Counterclockwise along a curve with a radius of 350.0 feet an arc distance of 72.29 feet to a point; thence

(71) North 08-27-47 West 111.69 feet to a point; thence

(72) North 83-50-44 West 35.55 feet to a point; thence

(73) North 54-02-22 East 167.02 feet to a point; thence

(74) South 72-00 East 27.75 feet to a point in the western property line of Harper Street; thence

(75) South 72-00 East 62.28 feet to a point in the eastern property line of Harper Street, the point and place of BEGINNING.

Flint Ridge Tract

BEGINNING at a point located along the centerline of S.R. 1009 (Old 86), the southeastern corner of the property described in Book 379, Page 45, Orange County Registry, and running thence the following courses and distances:

(1) South 64-42-40 West 30.42 feet to the western property line of S.R. 1009; thence

(2) South 64-42-40 West 1,167.91 feet to a point; thence

(3) North 25-20-00 West 299.79 feet to a point; thence

(4) North 86-55 West 668.29 feet to a point, the northeastern corner of Lot 36 of Flint Ridge Subdivision; thence

(5) South 13-12 East 250 feet to a point; thence

(6) South 76-48 West 100 feet to a point; thence

(7) South 18-04 West 239.83 feet to a point; thence

(8) South 05-08 West 270.07 feet to a point in the northern property line of S.R. 1133; thence

(9) North 72-28 West 146.85 feet to a point at the beginning of a curve leading from S.R. 1133 to Cheshire Drive (60' right-of-way); thence

(10) North 72-28 West approximately 100 feet across Cheshire Drive to a point in the southern property line of Lot 44, and the northern property line of S.R. 1133; thence

(11) North 72-28 West 107.68 feet to a point, the southwest corner of Lot 44; thence

(12) North 17-01 East 1,025.43 feet to a point, the northwest corner of Lot 54 of Flint Ridge; thence

(13) North 16-48-45 East 507.58 feet to a point; thence

(14) South 84-33-40 East 40.82 feet to a point; thence

(15) North 05-01-40 East 174.74 feet to a point; thence

(16) North 05-01-40 East 285.22 feet to a point; thence

(17) North 00-55-05 East 469.65 feet to a point, the Southwestern corner of the Jon S. Harder property as shown on plat of survey recorded in Plat Book 36, Page 38; thence

(18) South 64-38-45 East 1,297.75 feet to a stake; thence

(19) South 15-21-16 West 181.60 feet to a stake; thence

(20) South 48-03-15 West 22.71 feet to a stake; thence

(21) South 41-55-50 East 5.77 feet to a stake; thence

(22) Along a curve in a counter-clockwise direction with a radius of 506.98 feet, an arc distance of 398.18 feet to a point; thence

(23) South 86-55-50 East 234.52 feet to a point in the center line of S.R. 1009, the point and place of beginning.

Sec. 4. The Town will provide services to annexed areas in accordance with the provisions of Chapter 160A of the General Statutes, Article 4A, Part 2.

Sec. 5. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 29th day of June, 1987.

H.B. 1052

CHAPTER 511

AN ACT TO AMEND THE CERTIFICATE OF NEED LAW.

The General Assembly of North Carolina enacts:

Section 1. Article 9 of Chapter 131E of the General Statutes reads as rewritten:

"ARTICLE 9.

"Certificate of Need.

"§ 131E-175. *Findings of fact.*--The General Assembly of North Carolina makes the following findings:

(1) ~~That, because of the manner in which health care is financed, the forces of free market competition are largely absent and that government regulation is therefore necessary to control the cost, utilization, and distribution of health services~~ That the financing of

health care, particularly the reimbursement of health services rendered by health service facilities, limits the effect of free market competition and government regulation is therefore necessary to control costs, utilization, and distribution of new health service facilities and the bed complements of these health service facilities.

(2) That the continuously increasing cost of health care services offered through health service facilities threatens the health and welfare of the citizens of this State in that citizens need assurance of economical and readily available health care.

(3) That the current system of planning for health care facilities and equipment has led to the proliferation of new inpatient acute care facilities and medical equipment beyond the need of many localities in this State and an inadequate supply of health personnel and of resources for long term, intermediate, and ambulatory care in many localities. That, if left to the market place to allocate health service facilities and health care services, geographical maldistribution of these facilities and services would occur and, further, less than equal access to all population groups, especially those that have traditionally been medically underserved, would result.

(4) That this trend of the proliferation of unnecessary health care service facilities and equipment results in costly duplication and underuse of facilities, with the availability of excess capacity leading to unnecessary use of expensive resources and overutilization of acute care hospital health care services by physicians.

(5) That a certificate of need law is required by Title XV of the Public Health Service Act as a condition for receipt of federal funds. If these funds were withdrawn the State of North Carolina would lose in excess of fifty-five million dollars (\$55,000,000).

(6) That excess capacity of health service facilities places an enormous economic burden on the public who pay for the construction and operation of these facilities as patients, health insurance subscribers, health plan contributors, and taxpayers.

(7) That the general welfare and protection of lives, health, and property of the people of this State require that new institutional health services to be offered within this State be subject to review and evaluation as to type, level, need, cost of service, accessibility to services, quality of care, feasibility, and other criteria as determined by provisions of this Article or by the North Carolina Department of Human Resources pursuant to provisions of this Article prior to such services being offered or developed in order that only appropriate and

needed institutional health services are made available in the area to be served.

"§ 131E-176. *Definitions.*--As used in this Article, unless the context clearly requires otherwise, the following terms have the meanings specified:

(1) 'Ambulatory surgical facility' means a facility designed for the provision of an ambulatory surgical program. An ambulatory surgical facility serves patients who require local, regional or general anesthesia and a period of post-operative observation. An ambulatory surgical facility may only admit patients for a period of less than 24 hours and must provide at least one designated operating room and at least one designated recovery room, have available the necessary equipment and trained personnel to handle emergencies, provide adequate quality assurance and assessment by an evaluation and review committee, and maintain adequate medical records for each patient. An ambulatory surgical facility may be operated as a part of a physician or dentist's office, provided the facility is licensed under G.S. Chapter 131E, Article 6, Part D, but the performance of incidental, limited ambulatory surgical procedures which do not constitute an ambulatory surgical program as defined in subdivision (1a) and which are performed in a physician's or dentist's office does not make that office an ambulatory surgical facility.

(1a) 'Ambulatory surgical program' means a formal program for providing on a same-day basis those surgical procedures which require local, regional or general anesthesia and a period of post-operative observation to patients whose admission for more than 24 hours is determined, prior to surgery, to be medically unnecessary.

(2) 'Bed capacity' means space used exclusively for inpatient care, including space designed or remodeled for licensed inpatient beds even though temporarily not used for such purposes. The number of beds to be counted in any patient room shall be the maximum number for which adequate square footage is provided as established by ~~regulations~~ rules of the Department except that single beds in single rooms are counted even if the room contains inadequate square footage. The term 'bed capacity' also refers to the number of dialysis stations in kidney disease treatment centers, including freestanding dialysis units.

(2a) 'Capital expenditure' means an expenditure which under generally accepted accounting principles is not properly chargeable as an expense of operation and maintenance.

(3) 'Certificate of need' means a written order of the Department setting forth the affirmative findings that a proposed project sufficiently satisfies the plans, standards, and criteria prescribed for such projects

by this Article and by rules ~~and regulations~~ of the Department as provided in G.S. 131E-183(a) and which affords the person so designated as the legal proponent of the proposed project the opportunity to proceed with the development of such project.

(4) 'Certified cost estimate' means an estimate of the total cost of a project certified by the proponent of the project within 60 days prior to or subsequent to the date of submission of the proposed new institutional health service to the Department and which is based on:

- a. Preliminary plans and specifications;
- b. Estimates of the cost of equipment certified by the manufacturer or vendor; and
- c. Estimates of the cost of management and administration of the project.

(5) ~~'Change in bed capacity' means (i) any increase in the total number of beds, or (ii) any relocation of beds from one physical facility or site to another, or (iii) a decrease in the total number of beds when that decrease involves a capital expenditure exceeding the expenditure minimum as defined in subdivision (16)b of this section, or (iv) a redistribution of beds among different categories when that redistribution involves a capital expenditure exceeding the expenditure minimum as defined in subdivision (16)b of this section. For purposes of this subdivision "beds" means beds in hospitals, rehabilitation facilities, psychiatric facilities, chemical dependency treatment facilities, intermediate care facilities, skilled nursing facilities and intermediate care facilities for the mentally retarded.~~ (i) any relocation of health service facility beds, or dialysis stations from one licensed facility or campus to another, or (ii) any redistribution of health service facility bed capacity among the categories of health service facility bed as defined in G.S. 131E-176 (9c), or (iii) any increase in the number of health service facility beds, or dialysis stations in kidney disease treatment centers, including freestanding dialysis units.

(5a) 'Chemical dependency treatment facility' means a public or private facility, or unit in a facility, which is engaged in providing 24-hour a day treatment for chemical dependency or substance abuse. This treatment may include detoxification, administration of a therapeutic regimen for the treatment of chemically dependent or substance abusing persons and related services. The facility or unit may be:

- a. A unit within a general hospital or an attached or freestanding unit of a general hospital licensed under Article 5, Chapter 131E, of the General Statutes,

- b. A unit within a psychiatric hospital or an attached or freestanding unit of a psychiatric hospital licensed under Article 1A of General Statutes Chapter 122 or Article 2 of General Statutes Chapter 122C,
- c. A freestanding facility specializing in treatment of persons who are substance abusers or chemically dependent licensed under Article 1A of General Statutes Chapter 122 or Article 2 of General Statutes Chapter 122C; and may be identified as "chemical dependency, substance abuse, alcoholism, or drug abuse treatment units," "residential chemical dependency, substance abuse, alcoholism or drug abuse facilities," "social setting detoxification facilities" and "medical detoxification facilities," or by other names if the purpose is to provide treatment of chemically dependent or substance abusing persons, but shall not include halfway houses or recovery farms.

(5b) 'Chemical dependency treatment beds' means beds that are licensed for detoxification or for the inpatient treatment of chemical dependency. Residential treatment beds for the treatment of chemical dependency or substance abuse are chemical dependency treatment beds but those residential treatment beds that were developed and operated without a certificate of need shall not be counted in the inventory of chemical dependency treatment beds in the State Health Plans prepared by the Department pursuant to G.S. 131E-177(4) after July 1, 1987. The State Health Plans prepared after July 1, 1987, shall also contain no limitation on the proportion of the overall inventory of chemical dependency treatment beds located in any of the types of chemical dependency treatment facilities identified in subdivision (5a).

(6) 'Department' means the North Carolina Department of Human Resources.

(7) To 'develop' when used in connection with health services, means to undertake those activities which will result in the offering of institutional health service not provided in the previous 12-month reporting period or the incurring of a financial obligation in relation to the offering of such a service.

~~(8) 'Final decision' means an approval, an approval with conditions, or denial of an application for a certificate of need.~~

~~(9) 'Health care facilities' means hospitals; psychiatric facilities; skilled nursing facilities; kidney disease treatment centers, including freestanding hemodialysis units; intermediate care facilities, including~~

~~intermediate care facilities for the mentally retarded or persons with related conditions; rehabilitation facilities; home health agencies; chemical dependency treatment facilities, and ambulatory surgical facilities.~~

(9a) 'Health service' means an organized, interrelated medical, diagnostic, therapeutic, and/or rehabilitative activity that is integral to the clinical management of a sick, injured, or disabled person. 'Health service' does not include administrative and other activities that are not integral to clinical management.

(9b) 'Health service facility' means a hospital; psychiatric facility; rehabilitation facility; long term care facility; kidney disease treatment center, including freestanding hemodialysis units; intermediate care facility for the mentally retarded; home health agency; chemical dependency treatment facility; and ambulatory surgical facility.

(9c) 'Health service facility bed' means a bed licensed for use in a health service facility in the categories of (i) acute care beds; (ii) psychiatric beds; (iii) rehabilitation beds; (iv) intermediate nursing care or skilled nursing care beds; (v) intermediate care beds for the mentally retarded; and (vi) chemical dependency treatment beds.

(10) 'Health maintenance organization (HMO)' means a public or private organization which has received its certificate of authority under Chapter 57B of the General Statutes and which either is a qualified health maintenance organization under Section 1310(d) of the Public Health Service Act or:

- a. Provides or otherwise makes available to enrolled participants health care services, including at least the following basic health care services: usual physician services, hospitalization, laboratory, X ray, emergency and preventive services, and out-of-area coverage;
- b. Is compensated, except for copayments, for the provision of the basic health care services listed above to enrolled participants by a payment which is paid on a periodic basis without regard to the date the health care services are provided and which is fixed without regard to the frequency, extent, or kind of health service actually provided; and
- c. Provides physicians' services primarily (i) directly through physicians who are either employees or partners of such organizations, or (ii) through arrangements with individual physicians or one or more groups of physicians organized on a group practice or individual practice basis.

(11) 'Health systems agency' means ~~an agency, as defined by Title XV of the Public Health Service Act, as amended, and rules and regulations implementing that act an independent, private, nonprofit corporation, incorporated in this State, that engages in regional health planning and development functions.~~

(12) 'Home health agencies agency' means a private organization or public agency, whether owned or operated by one or more persons or legal entities, which furnishes or offers to furnish home health services.

'Home health services' means items and services furnished to an individual by a home health agency, or by others under arrangements with such others made by the agency, on a visiting basis, and except for paragraph e. of this subdivision, in a place of temporary or permanent residence used as the individual's home as follows:

- a. Part-time or intermittent nursing care provided by or under the supervision of a registered nurse;
- b. Physical, occupational or speech therapy;
- c. Medical social services, home health aid services, and other therapeutic services;
- d. Medical supplies, other than drugs and biologicals and the use of medical appliances;
- e. Any of the foregoing items and services which are provided on an outpatient basis under arrangements made by the home health agency at a hospital or nursing home facility or rehabilitation center and the furnishing of which involves the use of equipment of such a nature that the items and services cannot readily be made available to the individual in his home, or which are furnished at such facility while he is there to receive any such item or service, but not including transportation of the individual in connection with any such item or service.

(13) 'Hospital' means a public or private institution which is primarily engaged in providing to inpatients, by or under supervision of physicians, diagnostic services and therapeutic services for medical diagnosis, treatment, and care of injured, disabled, or sick persons, or rehabilitation services for the rehabilitation of injured, disabled, or sick persons. The term includes all facilities licensed pursuant to G.S. 131E-77 of the General Statutes.

(13a) 'Hospice' means any coordinated program of home care ~~within~~ with provision for inpatient care for terminally ill patients and their families. This care is provided by a medically directed interdisciplinary team, directly or through an agreement under the direction of an identifiable hospice administration. A hospice program of care provides palliative and supportive medical and other health

services to meet the physical, psychological, social, spiritual and special needs of patients and their families, which are experienced during the final stages of terminal illness and during dying and bereavement.

~~(14) 'Intermediate care facility' means a public or private institution which provides, on a regular basis, health-related care and services to individuals who do not require the degree of care and treatment which a hospital or skilled nursing facility is designed to provide, but who because of their mental or physical condition require health-related care and services above the level of room and board.~~

(14a) 'Intermediate care facility for the mentally retarded' means facilities licensed pursuant to Article 2 of Chapter 122C of the General Statutes for the purpose of providing health and habilitative services based on the developmental model and principles of normalization for persons with mental retardation, autism, cerebral palsy, epilepsy or related conditions.

(14b) 'Intermediate nursing care' means the provision of health-related care and services on a regular basis to individuals who do not require the degree of care and treatment that hospitals or skilled nursing care provide, but who because of their mental or physical condition require health-related care and services above the level of room and board.

(14c) 'Long term care facility' means a health service facility whose bed complement of health service facility beds is composed principally of skilled nursing beds or intermediate nursing care beds, or both.

~~(15) 'Major medical equipment' means a single unit or a single system of components with related functions which is used to provide medical and other health services and which costs more than six hundred thousand dollars (\$600,000). In determining whether medical equipment costs more than six hundred thousand dollars (\$600,000), the costs of studies, surveys, designs, plans, working drawings, specifications and other activities essential to acquiring the equipment shall be included. If the equipment is acquired for less than fair market value, the cost shall be deemed to be the fair market value.~~

(16) 'New institutional health services' means:

- a. The construction, development, or other establishment of a new health care service facility;
- b. ~~The obligation by or on behalf of a health care facility or a local health department established under Article 2 of Chapter 130A of the General Statutes of any capital expenditure, other than one to acquire an existing health~~

~~care facility, which exceeds the expenditure minimum. Further, increases in approved capital expenditures, if they exceed the expenditure minimum, are also new institutional health services. The expenditure minimum is one million dollars (\$1,000,000) for the 12-month period beginning October 1, 1985. For each 12-month period thereafter the expenditure minimum shall be the figure in effect for the preceding 12-month period, adjusted to reflect the change in the preceding 12-month period in the Department of Commerce Composite Construction Cost Index. The obligation by any person of any capital expenditure on behalf of or for a health service facility as defined in subsection(9b) of this section exceeding two million dollars (\$2,000,000), other than one to acquire an existing health service facility or to replace such a facility destroyed or irreparably damaged by accident or natural disaster. The cost of any studies, surveys, designs, plans, working drawings, specifications, and other activities, including staff effort and consulting and other services, essential to the acquisition, improvement, expansion, or replacement of any plant or equipment with respect to which an expenditure is made shall be included in determining if the expenditure exceeds the expenditure minimum two million dollars (\$2,000,000);~~

- ~~c. The obligation of a capital expenditure by or on behalf of a health care facility when it is associated with a change in bed capacity and within the limits set forth in G.S. 131E-176(5). Any change in bed capacity as defined in G.S. 131E-176(5);~~
- ~~d. The obligation of any capital expenditure by or on behalf of a health care facility which is associated with the addition of a health service which was not offered by or on behalf of the facility within the previous 12 months or with the termination of a health service which was offered in or through the facility. The offering of dialysis services or home health services by or on behalf of a health service facility if those services were not offered within the previous 12 months by or on behalf of the facility;~~
- ~~e. A change in a project which was subject to review under paragraphs a, b, c, or d of this subdivision and for which a certificate of need had been issued, if the change is proposed within one year after the project was completed.~~

~~For the purposes of this paragraph, a change in a project is a change in bed capacity, the addition of a health service, or the termination of a health service, regardless of whether a capital expenditure is associated with the change; A change in a project that was subject to certificate of need review and for which a certificate of need was issued, if the change is proposed during the development of the project or within one year after the project was completed. For purposes of this subdivision, a change in a project is a change of more than fifteen percent (15%) of the approved capital expenditure amount or the addition of a health service that is to be located in the facility, or portion thereof, that was constructed or developed in the project;~~

- ~~f. The offering of a health service by or on behalf of a health ~~care~~ service facility if the service was not offered by or on behalf of the health ~~care~~ service facility in the previous 12 months and if the annual operating costs of the service equal or exceed the expenditure minimum one million dollars (\$1,000,000), or the expansion of an existing health service when an annual operating cost of one million dollars (\$1,000,000) is directly associated with the offering of the expanded portion of the service; - The expenditure minimum for annual operating costs is two hundred fifty thousand dollars (\$250,000) for the 12-month period beginning October 1, 1979. For each 12-month period thereafter the expenditure minimum shall be the figure in effect for the preceding 12-month period, adjusted to reflect the change in the preceding 12-month period in the Department of Commerce Composite Construction Cost Index;~~
- ~~g. The acquisition by any person of major medical equipment that will be owned by or located in a health care facility or the acquisition by any person of major medical equipment that includes magnetic resonance imaging, regardless of ownership or location;~~
- ~~h. The acquisition by any person of major medical equipment not owned by or located in a health care facility if notice of the acquisition is not filed with the Department in accordance with rules promulgated by the Department, or the Department, within 30 days after receipt of the notice, finds that the equipment will be used to provide services to inpatients of a hospital, excluding use on a temporary basis in the case of a natural disaster, a major~~

- ~~accident, or equipment failure, or the Department, within 30 days after receipt of the notice, finds that the major medical equipment is among the types enumerated in g, above;~~
- ~~i. The use, excluding use on a temporary basis in the case of a natural disaster, a major accident, or equipment failure, of major medical equipment which was acquired without a certificate of need, to treat inpatients of a hospital;~~
 - ~~j. The obligation of a capital expenditure by any person to acquire an existing health care facility, if a notice of intent is not filed with the Department in accordance with rules promulgated by the Department, or the Department, within 30 days after receipt of the notice of intent, finds that there will be a change in bed capacity, the addition of a health service not offered by or on behalf of the facility within the previous 12 months, or the termination of a health service which was offered by or on behalf of the facility;~~
 - ~~k. A change in bed capacity, the addition of a health service which was not offered by or on behalf of the facility within the previous 12 months, or the termination of a health service which was offered by or on behalf of the facility, in a health care facility which was acquired without a certificate of need, if such change occurs within one year of the acquisition;~~
 - ~~l. Notwithstanding the provisions of G.S. 131E-176(16)h and j, the purchase, lease or acquisition of any of the following: any health care facility, or portion thereof; major medical equipment; a controlling interest in the health care facility, or portion thereof; or a controlling interest in major medical equipment. The aforesaid are new institutional health services if the asset was obtained under a certificate of need issued pursuant to G.S. 131E-180; The purchase, lease, or acquisition of any health service facility, or portion thereof, or a controlling interest in the health service facility or portion thereof, if the health service facility was developed under a certificate of need issued pursuant to G.S. 131E-180;~~
 - ~~m. Any conversion of nonhealth care service facility beds to health care service facility beds; regardless of whether a capital expenditure is associated with the conversion. A~~

~~bed is a nonhealth care facility bed if a facility that contained only that type of bed would not be a health care facility. A bed is a health care facility bed if a facility that contained only that type of bed would be a health care facility;~~

- n. The construction, development, or other establishment of a hospice if the operating budget thereof is in excess of one hundred thousand dollars (\$100,000) ~~or if there is the obligation of any capital expenditure by or on behalf of the hospice as provided in G.S. 131E-176(16)b .~~

(17) 'North Carolina State Health Coordinating Council' means the Council ~~as defined by Title XV of the Public Health Service Act, as amended, and rules and regulations implementing that act that~~ prepares, with the Department of Human Resources, the State Medical Facilities Plan, a component of the State Health Plan.

(18) To 'offer,' when used in connection with health services, means that the health ~~care~~ service facility or health maintenance organization holds itself out as capable of providing, or as having the means for the provision of, specified health services.

(19) 'Person' means an individual, a trust or estate, a partnership, a corporation, including associations, joint stock companies, and insurance companies; the State, or a political subdivision or agency or instrumentality of the State.

(20) 'Project' or 'capital expenditure project' means a proposal to undertake a capital expenditure that results in the offering of a new institutional health service as defined by this Article. A project, or capital expenditure project, or proposed project may refer to the project from its earliest planning stages up through the point at which the specified new institutional health service may be offered. In the case of facility construction, the point at which the new institutional health service may be offered must take place after the facility is capable of being fully licensed and operated for its intended use, and at that time it shall be considered a health ~~care~~ service facility.

(21) 'Psychiatric facility' means a public or private facility licensed pursuant to Article 2 of Chapter 122C of the General Statutes and which is primarily engaged in providing to inpatients, by or under the supervision of a physician, psychiatric services for the diagnosis and treatment of mentally ill persons.

(22) 'Rehabilitation facility' means a public or private inpatient ~~or outpatient~~ facility which is operated for the primary purpose of assisting in the rehabilitation of disabled persons through an integrated program of medical and other services which are provided under competent, professional supervision, ~~and shall include 'comprehensive~~

~~outpatient rehabilitation facilities' as defined by the Social Security Act and the regulations promulgated by the Department of Health and Human Services pursuant to that act.~~

~~(23) 'Skilled nursing facility care' means a public or private institution or a distinct part of an institution which is primarily engaged in providing to inpatients skilled nursing care and related services for patients the provision of that degree of care to inpatients who require medical or nursing care, or rehabilitation services for the rehabilitation of injured, disabled, or sick persons.~~

~~(24) 'State Health Plan' means the plan required by Title XV of the Public Health Service Act, as amended, and rules and regulations implementing that act prepared by the Department of Human Resources and the North Carolina State Health Coordinating Council and approved by the Governor.~~

~~(25) 'State Medical Facilities Plan' means the plan a component of the State Health Plan prepared by the Department of Human Resources and the North Carolina State Health Coordinating Council, as required by Title XV of the Public Health Service Act, as amended, and rules and regulations implementing that act and approved by the Governor.~~

~~(26) Repealed by Session Laws 1983 (Regular Session, 1984), c.1002, s. 9.~~

~~(27) "Tuberculosis hospital" means a public or private institution which is primarily engaged in providing to inpatients, by or under the supervision of a physician, medical services for the diagnosis and treatment of tuberculosis.~~

~~"§ 131E-177. Department of Human Resources is designated State Health Planning and Development Agency; powers and duties.--The Department of Human Resources is designated as the State Health Planning and Development Agency for the State of North Carolina, and is empowered to fulfill responsibilities defined in Title XV of the Public Health Service Act.~~

~~The Department shall exercise the following powers and duties:~~

~~(1) To establish standards and criteria or plans required to carry out the provisions and purposes of this Article and to adopt rules and regulations pursuant to Chapter 150A, 150B of the General Statutes, to carry out the purposes and provisions of this Article;~~

~~(2) Adopt, amend, and repeal such rules and regulations, consistent with the laws of this State, as may be required by the federal government for grants-in-aid for health care service facilities and health planning which may be made available by the federal government. This section shall be liberally construed in order that the State and its citizens may benefit from such grants-in-aid;~~

(3) Define, by ~~regulation~~ rule, procedures for submission of periodic reports by persons or health service facilities subject to agency review under this Article;

(4) Develop policy, criteria, and standards for health care service facilities planning, conduct statewide inventories of and make determinations of need for health care service facilities, and develop a ~~State plan coordinated with other plans of health systems agencies with other pertinent plans and with the State health plan of the Department~~ State Health Plan;

(5) Implement, by ~~regulation~~ rule, criteria for project review;

(6) Have the power to grant, deny, ~~suspend, or revoke~~ or withdraw a certificate of need and to impose such sanctions as are provided for by this Article;

(7) Solicit, accept, hold and administer on behalf of the State any grants or bequests of money, securities or property to the Department for use by the Department or health systems agencies in the administration of this Article; and

~~(8) Develop procedures for appeals of decisions to approve or deny a certificate of need, as provided by G.S. 131E-188; and~~

(9) Establish and collect fees for submitting applications for certificates-of-need, which fees shall be based on the total cost of the project for which the applicant is applying. This fee may not exceed fifteen thousand dollars (\$15,000) and may not be less than four hundred dollars (\$400.00).

The Secretary of Human Resources shall have final decision-making authority with regard to all functions described in this section.

" § 131E-178. *Activities requiring certificate of need.*--(a) No person shall offer or develop a new institutional health service without first obtaining a certificate of need from the Department. ~~Provided that chemical dependency treatment facilities containing beds licensed as of June 30, 1984, shall not be required to obtain a certificate of need. A hospital shall not be required to obtain a certificate of need for a new institutional health service offered or developed by or on behalf of the hospital for outpatients in a freestanding facility unless all other persons offering or developing the same new institutional health service in a freestanding facility are required under this Article to obtain a certificate of need.~~

~~No person, acute care hospital, or outpatient facility shall be required to obtain a certificate of need for the acquisition of a lithotripter or for the development, offering, or operation of a lithotripsy service.~~

(b) No person shall make an acquisition by donation, lease, transfer, or comparable arrangement without first obtaining a certificate of need from the Department, if the acquisition would have been a new institutional health service if it had been made by purchase. In determining whether an acquisition would have been a new institutional health service the fair market value of the asset shall be deemed to be the purchase price.

(c) No person shall incur an obligation for a capital expenditure which is a new institutional health service without first obtaining a certificate of need from the ~~department~~ Department. An obligation for a capital expenditure is incurred ~~by or on behalf of a health-care facility~~ when:

- (1) An enforceable contract, excepting contracts which are expressly contingent upon issuance of a certificate of need, is entered into ~~by or on behalf of the health-care facility~~ by a person for the construction, acquisition, lease or financing of a capital asset;
- (2) ~~The governing body of a health-care facility~~ A person takes formal action to commit ~~its own~~ funds for a construction project undertaken ~~by the health-care facility as its~~ as his own contractor; or
- (3) In the case of donated property, the date on which the gift is completed.

(d) Where the estimated cost of a proposed capital expenditure is certified by a licensed architect or engineer to be equal to or less than the expenditure minimum for capital expenditure, such expenditure shall be deemed not to exceed the expenditure minimum for capital expenditures regardless of the actual amount expended, provided that the following conditions are met:

- (1) The certified estimated cost is prepared in writing 60 days or more before the obligation for the capital expenditure is incurred. Certified cost estimates shall be available for inspection at the facility and sent to the Department upon its request.
- (2) The facility on whose behalf the expenditure was made notifies the Department in writing within 30 days of the date on which such expenditure is made if the expenditure exceeds the expenditure minimum for capital expenditures. The notice shall include a copy of the certified cost estimate.

(e) The Department may grant certificates of need which permit capital expenditures only for predevelopment activities. Predevelopment activities include the preparation of architectural designs, plans, working drawings, or specifications, the preparation of studies and

surveys, and the acquisition of a potential site.

" § 131E-179. *Research activities.*--(a) Notwithstanding any other provisions of this Article, a health ~~care service~~ facility may ~~acquire major medical equipment to be used solely for research,~~ offer new institutional health services to be used solely for research, or incur the obligation of a capital expenditure solely for research, without a certificate of need, if the Department grants an exemption. The Department shall grant an exemption if the health ~~care service~~ facility files a notice of intent with the Department in accordance with rules promulgated by the Department and if the Department finds that the ~~acquisition,~~ offering or obligation will not:

- (1) Affect the charges of the health ~~care service~~ facility for the provision of medical or other patient care services other than services which are included in the research;
- (2) Substantially change the bed capacity of the facility; or
- (3) Substantially change the medical or other patient care services of the facility.

(b) After a health ~~care service~~ facility has received an exemption pursuant to subsection (a) of this section, it shall not ~~use the major medical equipment,~~ offer the new institutional health services, or use ~~the equipment or~~ a facility acquired through the capital expenditure, in a manner which affects the charges of the facility for the provision of medical or other patient care services, other than the services which are included in the research and shall not charge patients for the use of the service for which an exemption has been granted, without first obtaining a certificate of need from the Department.

(c) Any of the activities described in subsection (a) of this section shall be deemed to be solely for research even if they include patient care provided on an occasional and irregular basis and not as a part of the research program.

" § 131E-180. *Health maintenance organization.*--(a) Subject to the provisions of subsection (b) of this section, no inpatient health ~~care service~~ facility controlled, directly or indirectly, by a health maintenance organization, (HMO), ~~hereinafter referred to as HMOs,~~ or combination of HMOs, shall offer or develop new institutional health services without first obtaining a certificate of need from the Department. ~~Further, subject to the provisions of subsection (b) of this section, no health care service facility of an HMO shall offer or develop any of the new institutional health services specified in G.S.~~

~~131E-176(16)g, h, and i without first obtaining a certificate of need from the Department.~~ This section shall not be construed as requiring that a certificate of need be obtained before an HMO is established.

(b) The requirements of subsection (a) of this section shall not apply to any person who receives an exemption under this subsection. In order to receive an exemption an application must be submitted to the Department and the appropriate health systems agency or agencies. The application shall be on forms prescribed by the Department and contain the information required by the Department. The application shall be submitted at a time and in a manner prescribed by the rules ~~and regulations~~ of the Department. The Department may grant an exemption if it finds that the applicant is qualified or will be qualified on the date the activity is undertaken. Any of the following are qualified applicants:

- (1) An HMO or combination of HMOs, if (i) the HMO or combination of HMOs has an enrollment of at least 50,000 individuals in its service area, (ii) the facility in which the service will be provided is or will be geographically located so that the service will be reasonably accessible to the enrolled individuals, and (iii) at least seventy-five percent (75%) of the patients who can be reasonably expected to receive the health service will be individuals enrolled in the HMO or HMOs in combination; or
- (2) A health ~~care~~ service facility, or portion thereof, if (i) the facility primarily provides or will provide inpatient health services, (ii) the facility is or will be controlled, directly or indirectly, by an HMO or combination of HMOs with an enrollment of at least 50,000 individuals in its service area, (iii) the facility is or will be geographically located so that the service will be reasonably accessible to the enrolled individuals, and (iv) at least seventy-five percent (75%) of the patients who can be reasonably expected to receive the health service will be individuals enrolled with the HMO or HMOs in combination; or
- (3) A health ~~care~~ service facility, or portion thereof, if (i) the facility is or will be leased by an HMO or combination of HMOs with an enrollment of at least 50,000 individuals in its service area and on the date the application for exemption is submitted at least 15 years remain on the lease, (ii) the facility is or will be geographically located so that the service will be

reasonably accessible to the enrolled individuals, and
(iii) at least seventy-five percent (75%) of the patients who can be reasonably expected to receive the health service will be individuals enrolled with the HMO or HMOs in combination.

(c) If a fee-for-service component of an HMO or combination of HMOs qualifies for an exemption under subsection (b) of this section, then it must be granted an exemption.

(d) In reviewing certificate of need applications submitted pursuant to this section, the Department shall not deny the application solely because the proposal is not addressed in the applicable health systems plan, annual implementation plan or State Health Plan.

(e) Notwithstanding the review criteria of G.S. 131E-183(a), if an HMO or a health ~~care~~ service facility which is controlled, directly or indirectly, by an HMO applies for a certificate of need, the Department may grant the certificate if it finds, in accordance with G.S. 131E-183(a)(10), that (i) granting the certificate is required to meet the needs of the members of the HMO and of the new members which the HMO can reasonably be expected to enroll, and (ii) the HMO is unable to provide, through services or facilities which can reasonably be expected to be available to the HMO, its health services in a reasonable and cost-effective manner which is consistent with the basic method of operations of the HMO and which makes these services available on a long-term basis through physicians and other health professionals associated with it.

"§ 131E-181. *Nature of certificate of need.*--(a) A certificate of need shall be valid only for the defined scope, physical location, and person named in the application. A certificate of need shall not be transferred or assigned. Provided, however, that a certificate of need granted to operate a hospital may be transferred or assigned to another person undertaking a legal obligation to own or operate the hospital if the Department determines that:

- (1) The existing hospital cannot reasonably continue operating in a manner sufficient to provide the health services for which its certificate of need was granted;
- (2) Another person is ready, willing and able to assume ownership or operation of the hospital and to provide the appropriate and needed health services;
- (3) Failure to approve the transfer or assignment would likely result in a significant deficiency in the level of health services available in the area to be served; and

- (4) There is no pending application for a certificate of need which is likely to be granted for providing the appropriate and needed services within time to prevent a significant deficiency in the level of health services available in the area to be served. Any certificate of need transferred or assigned under this section may be under such conditions as the Department considers necessary to best protect the health and lives of the people of this State.

(b) A recipient of a certificate of need, or any person who may subsequently acquire, in any manner whatsoever permitted by law, the service for which that certificate of need was issued, is required to materially comply with the representations made in its application for that certificate of need. The Department may ~~by rule~~ require any recipient of a certificate of need, or its successor, whose service is in operation to submit to the Department evidence that the recipient, or its successor, is in material compliance with the representations made in its application for the certificate of need which granted the recipient the right to operate that service. ~~The Secretary is authorized to adopt, amend, and repeal rules to administer this subsection.~~ In determining whether the recipient of a certificate of need, or its successor, is operating a service which materially differs from the representations made in its application for that certificate of need, the ~~court~~ Department shall consider cost increases to the recipient, or its successor, including, but not limited to, the following:

- (1) Any increase in the consumer price index;
- (2) Any increased cost incurred because of Government requirements, including federal, State, or any political subdivision thereof; and
- (3) Any increase in cost due to professional fees or the purchase of services and supplies.

(c) Whenever a certificate of need is issued more than 12 months after the application for the certificate of need began review, the Department shall adjust the capital expenditure amount proposed by increasing it to reflect any inflation in the Department of Commerce's Construction Cost Index that has occurred since the date when the application began review; and the Department shall use this recalculated capital expenditure amount in the certificate of need issued for the project.

"§ 131E-182. Application.--(a) The Department in its rules and regulations shall establish schedules for submission and review of completed applications. The schedules, which shall be consistent with

~~federal law and regulations~~, shall provide that applications for similar proposals in the same health service area will be reviewed together.

(b) An application for a certificate of need shall be made on forms provided by the Department. The application forms, which may vary according to the type of proposal, shall require such information as the Department, by its rules ~~and regulations~~, deems necessary to conduct the review. An applicant shall be required to furnish only that information necessary to determine whether the proposed new institutional health service is consistent with the review criteria implemented under G.S. 131E-183 and with duly adopted standards, plans and criteria.

(c) All fees established by the Department for submitting an application for a ~~certificate of need~~ certificate of need are due when the application is submitted. These fees are not refundable, regardless of whether a ~~certificate of need~~ certificate of need is issued.

"§ 131E-183. Review criteria.--(a) The Department shall promulgate rules implementing criteria outlined in this subsection to determine whether an applicant is to be issued a certificate for the proposed project. Criteria so implemented are to be consistent with federal law and regulations and shall cover: review all applications utilizing the criteria outlined in this subsection and shall determine if an application is consistent with these criteria and whether a certificate of need for the proposed project shall be issued.

- (1) The relationship of the proposed project shall be consistent with applicable policies and projections in to the State Medical Facilities Plan, [and] and the State Health Plan.
- ~~(2) The relationship of services reviewed to the long-range development plan, if any, of the persons providing or proposing such services.~~
- (3) The need that The applicant shall identify the population served or to be served by such services has for such services, and the extent to which all residents of the area, and in particular low income persons, racial and ethnic minorities, women, handicapped persons and other underserved groups, and the elderly, are likely to have access to those services the proposed project, and shall demonstrate the need that this population has for the services proposed, and the extent to which all residents of the area, and, in particular, low income persons, racial

- and ethnic minorities, women, handicapped persons, the elderly, and other underserved groups are likely to have access to the services proposed.
- (3a) In the case of a reduction or elimination of a service, including the relocation of a facility or a service, the applicant shall demonstrate that the need that needs of the population presently served has for the service, the extent to which that need will be met adequately by the proposed relocation or by alternative arrangements, and the effect of the reduction, elimination or relocation of the service on the ability of low income persons, racial and ethnic minorities, women, handicapped persons, and other underserved groups and the elderly to obtain needed health care.
- (4) The availability of less costly or more effective alternative methods of providing the services to be offered, expanded, reduced, relocated or eliminated. Where alternative methods of meeting the needs for the proposed project exist, the applicant shall demonstrate that the least costly or most effective alternative has been proposed.
- (5) Financial and operational projections for the project shall demonstrate the availability of funds for capital and operating needs as well as the immediate and long-term financial feasibility of the proposal, as well as the probable impact of the proposal on based upon reasonable projections of the costs of and charges for providing health services by the person proposing the service.
- (6) The relationship of the services proposed to be provided to the existing health care system of the area in which such services are proposed to be provided. The applicant shall demonstrate that the proposed project will not result in unnecessary duplication of existing or approved health service capabilities or facilities.
- (7) The applicant shall show evidence of the availability of resources, including health manpower, manpower and management personnel, and funds for capital and operating needs, for the provision of the services proposed to be provided. Further, the applicant shall show that the use of these resources for provision of these services will not preclude alternative uses of these resources to fulfill other more important needs identified by the applicable State Health Plan, and the

~~need for alternative uses of these resources as identified by the applicable health systems plan, annual implementation plan or State Health Plan.~~

- (8) ~~The relationship, including the organizational relationship, of the health services proposed to be provided to ancillary or support services. The applicant shall demonstrate that the provider of the proposed services will make available, or otherwise make arrangements for, the provision of the necessary ancillary and support services. The applicant shall also demonstrate that the proposed service will be coordinated with the existing health care system.~~
- (9) ~~Special needs and circumstances of those entities which provide a substantial portion of their services or resources, or both, to individuals not residing in the health service areas in which the entities are located or in adjacent health service areas. Such entities may include medical and other health professions schools, multidisciplinary clinics and specialty centers. An applicant proposing to provide a substantial portion of the project's services to individuals not residing in the health service area in which the project is located, or in adjacent health service areas, shall document the special needs and circumstances that warrant service to these individuals.~~
- (10) ~~The special needs and circumstances of HMOs. These needs and circumstances shall be limited to. When applicable, the applicant shall show that the special needs of health maintenance organizations will be fulfilled by the project. Specifically, the applicant shall show that the project accommodates:~~

a. The needs of enrolled members and reasonably anticipated new members of the HMO for the health service to be provided by the organization; and

b. The availability of new health services from non-HMO providers or other HMOs in a reasonable and cost-effective manner which is consistent with the basic method of operation of the HMO. In assessing the availability of these health services from these providers, the ~~Department~~ applicant shall consider only whether the services from these providers:

1. Would be available under a contract of at least five years' duration;

2. Would be available and conveniently accessible through physicians and other health professionals associated with the HMO;
3. Would cost no more than if the services were provided by the HMO; and
4. Would be available in a manner which is administratively feasible to the HMO.

~~(11) The special needs and circumstances of biomedical and behavioral research projects which are designed to meet a national need and for which local conditions offer special advantages.~~

~~(12) In the case of a construction project, the costs and methods of the proposed construction, including the costs and methods of energy provision, and the probable impact of the construction project reviewed on the costs of providing health services by the person proposing the construction project and on the costs and charges to the public of providing health services by other persons. Applications involving construction shall demonstrate that the cost, design, and means of construction proposed represent the most reasonable alternative, and that the construction project will not unduly increase the costs of providing health services by the person proposing the construction project or the costs and charges to the public of providing health services by other persons, and that applicable energy saving features have been incorporated into the construction plans.~~

(13) The applicant shall demonstrate the contribution of the proposed service in meeting the health-related needs of the elderly and of members of medically underserved groups, such as medically indigent or low income persons, Medicaid and Medicare recipients, racial and ethnic minorities, women, and handicapped persons, which have traditionally experienced difficulties in obtaining equal access to the proposed health services, particularly those needs identified in the applicable health systems plan, annual implementation plan, and State Health Plan as deserving of priority. For the purpose of determining the extent to which the proposed service will be accessible, the Department shall consider applicant shall show:

a. The extent to which medically underserved populations currently use the applicant's ~~proposed~~ existing services in comparison to the percentage of the population in the applicant's service area which is

medically underserved, and the extent to which medically underserved populations are expected to use the proposed services if approved;

b. ~~The~~ Its past performance of the applicant in meeting its obligation, if any, under any applicable regulations requiring provision of uncompensated care, community service, or access by minorities and handicapped persons to programs receiving federal assistance, including the existence of any civil rights access complaints against the applicant;

c. ~~The extent to which Medicare, Medicaid and medically indigent patients are served by the applicant~~ That the elderly and the medically underserved groups identified in this subdivision will be served by the applicant's proposed services and the extent to which each of these groups is expected to utilize the proposed services; and

d. ~~The extent to which~~ That the applicant offers a range of means by which a person will have access to its services. Examples of a range of means are outpatient services, admission by house staff, and admission by personal physicians.

- (14) ~~The effect of the means proposed for delivery of the health services on the clinical needs of health professional training programs in the area in which the services are to be provided. The applicant shall demonstrate that the proposed health services accommodate the clinical needs of health professional training programs in the area, as applicable.~~
- (15) ~~If the proposed health services are to be available in a limited number of facilities, the extent to which the health professions schools in the area will have access to the services for training purposes.~~
- (16) ~~The special circumstances of health care facilities with respect to the need for conserving energy.~~
- (17) ~~In accordance with Section 1502(b) of the Public Health Service Act, 42 U.S.C. 300k-2(b), the factors which influence the effect of competition on the supply of the health services being reviewed.~~
- (18) ~~Improvements or innovations in the financing and delivery of health services which foster competition, in accordance with Section 1502(b) of the Public Health Service Act, 42 U.S.C. 300k-2(b), and serve to promote quality assurance and cost effectiveness.~~
- (18a) The applicant shall demonstrate the expected effects of the proposed services on competition in the proposed service area, including how any enhanced competition

will have a positive impact upon the cost effectiveness, quality, and access to the services proposed; and in the case of applications for services where competition between providers will not have a favorable impact on cost effectiveness, quality, and access to the services proposed, the applicant shall demonstrate that its application is for a service on which competition will not have a favorable impact.

- ~~(19) In the case of proposed health services or facilities, the efficiency and appropriateness of the use of existing, similar services and facilities.~~
- ~~(20) In the case of existing services or facilities, the quality of care provided in the past. An applicant already involved in the provision of health services shall provide evidence that quality care has been provided in the past.~~
- ~~(21) When an application is made by an osteopathic or allopathic facility for a certificate of need to construct, expand, or modernize a health care facility, acquire major medical equipment, or add services, the need for that construction, expansion, modernization, acquisition of equipment, or addition of services shall be considered on the bases of the need for and availability in the community of services and facilities for osteopathic and allopathic physicians and their patients. The Department shall consider the application in terms of its impact on existing and proposed institutional training programs for doctors of osteopathy and medicine at the student, internship, and residency training levels.~~

~~(b) Criteria adopted for reviews in accordance with subsection (a) of this section may vary according to the purpose for which a particular review is being conducted or the type of health service reviewed. The Department is authorized to adopt rules for the review of particular types of applications that will be used in addition to those criteria outlined in subsection (a) of this section and may vary according to the purpose for which a particular review is being conducted or the type of health service reviewed.~~

~~(c) (See Editor's Note for Applicability and Effective Date). In reviewing applications for skilled nursing facilities or intermediate care facilities to be provided within a "life care" or "care for life" institution, the determination of need for beds shall not include a relationship of the proposed project to the need for such services~~

~~specified in the State Medical Facilities Plan or State Health Plan provided that (i) the use of the proposed facilities is to be limited to resident members of the "life care" or "care for life" institution, (ii) the facilities are not to be certified for participation in either the Medicare or Medicaid programs, (iii) the ratio of skilled nursing facility beds and intermediate care facility beds to domiciliary and other residential arrangements shall not exceed one to three, and (iv) the facilities are to be developed after residential housing has been established or be developed as a part of a total housing construction program which shall result in the complex being one inseparable project. Facilities developed under this provision shall not alter the need for nursing home beds for the general population that exists now or at any time in the future.~~

~~"§ 131E-184. Required approvals. Exemptions from review.--(a) Except as provided in subsection (b), the Department shall issue a exempt from certificate of need review for a proposed capital expenditure if it receives notice from the entity proposing to make the capital expenditure, which notice includes an explanation of why the expenditure is required:~~

- ~~(1) The capital expenditure is required (i) to To eliminate or prevent imminent safety hazards as defined in federal, State, or local fire, building, or life safety codes or regulations, or (ii) to ;~~
- ~~(1a) To comply with State licensure standards, or (iii) to ;~~
- ~~(1b) To comply with accreditation or certification standards which must be met to receive reimbursement under Title XVIII of the Social Security Act or payments under a State plan for medical assistance approved under Title XIX of that act; and~~
- ~~(2) The Department determines that (i) the facility or services for which the capital expenditure is proposed is needed, and (ii) the obligation of the capital expenditure is consistent with the State Health Plan. Even though the proposal is inconsistent with the State Health Plan, the Department may issue a certificate of need if emergency circumstances pose an imminent threat to public health.~~
- ~~(3) To provide data processing equipment;~~
- ~~(4) To provide parking, heating or cooling systems, elevators, or other basic plant or mechanical improvements, unless these activities are integral portions of a project that involves the construction of a new health service facility or portion thereof and that~~

is subject to certificate of need review; or

- (5) To replace or repair facilities destroyed or damaged by accident or natural disaster.

(b) Those portions of a proposed project which are not to ~~eliminate or prevent safety hazards or to comply with certain licensure, certification, or accreditation standards~~ proposed for one or more of the purposes under subsection (a) of this section are subject to ~~review under the criteria developed under G.S. 131E-183~~ certificate of need review, if these non-exempt portions of the project are new institutional health services under G.S. 131E-176(16).

(c) The Department shall exempt from certificate of need review any conversion of existing acute care beds to psychiatric beds provided:

- (1) The hospital proposing the conversion has executed a contract with the Department's Division of Mental Health, Mental Retardation, and Substance Abuse Services and/or one or more of the Area Mental Health, Mental Retardation, and Substance Abuse Authorities to provide psychiatric beds to patients referred by the contracting agency or agencies; and
- (2) The total number of beds to be converted shall not be more than twice the number of beds for which the contract pursuant to subdivision (1) of this subsection shall provide.

~~" § 131E-185. Review process.--(a) Except as provided in subsection (c) of this section there shall be a time limit of 90 days for review of the project beginning on the day the Department declares the application "complete for review," as established by departmental regulations.~~

- ~~(1) The appropriate health systems agency or agencies shall have 60 days to review each application as to consistency with duly adopted plans, standards, and criteria. Following the review the health systems agency shall submit to the Department its comments and recommendations. The comments may include a recommendation to approve the application, to approve the application with conditions, to defer the application, or to deny the application. Suggested modifications, if any, shall relate directly to the project under review.~~
- ~~(2) The appropriate health systems agency shall, during the course of its review, provide an opportunity for a public meeting at which interested persons may~~

~~introduce testimony and exhibits.~~

- ~~(3) Any person may file written comments and exhibits concerning a proposal under review with the appropriate health systems agency and the Department.~~

(a1) Except as provided in subsection (c) of this section, there shall be a time limit of 90 days for review of the applications, beginning on the day established by rule as the day on which applications for the particular service in the service area shall begin review.

- (1) Any person may file written comments and exhibits concerning a proposal under review with the Department, not later than 45 days after the date on which the application begins review. These written comments may include:

a. Facts relating to the service area proposed in the application;
b. Facts relating to the representations made by the applicant in its application, and its ability to perform or fulfill the representations made;

c. Discussion and argument regarding whether, in light of the material contained in the application and other relevant factual material, the application complies with relevant review criteria, plans, and standards.

- (2) At least 15, but no more than 30 days from the conclusion of the written comment period, the Department shall ensure that a public hearing is conducted at a place within the appropriate health service area at which oral presentations may be made regarding the application or applications under review; and this public hearing shall include the following:

- a. An opportunity for the proponent of each application under review to respond to the written comments submitted to the Department about its application;
b. An opportunity for any affected person as defined in G.S. 131E-188(c), except one of the proponents, to present comments regarding the applications under review;
c. An opportunity for a representative of the Department, or such other person or persons who are designated by the Department to conduct the hearing, to question each proponent of applications under review with regard to the contents of the application;

The Department shall maintain a recording of the public hearing on each application until such time as the Department's final decision is issued, or until a final agency decision is issued pursuant to a contested case hearing, whichever is later; and any person may submit a written synopsis or verbatim statement that contains the oral presentation made at the hearing.

- (3) The Department may contract or make arrangements with a person or persons located within each health service area for the conduct of such public hearings as may be necessary. The Department shall publish, in each health service area, notice of the contracts that it executes for the conduct of those hearings. If a health systems agency is in operation in a health service area, the Department shall use that health systems agency for the conduct of the public hearings in that area. A health systems agency may make recommendations on any matter covered in this Article, but no such recommendation shall interfere with the timetables of the review process contained in this Article.

- (4) Within 15 days from the beginning of the review of an application or applications proposing the same service within the same service area, the Department shall publish notice of the deadline for receipt of written comments, of the time and place scheduled for the public hearing regarding the application or applications under review, and of the name and address of the person or agency that will preside.

- (5) The Department shall maintain all written comments submitted to it during the written comment stage and any written submissions received at the public hearing as part of the Department's file respecting each application or group of applications under review by it. The application, written comments, and public hearing comments, together with all documents that the Department used in arriving at its decision, from whatever source, and any documents that reflect or set out the Department's final analysis of the application or applications under review, shall constitute the Department's record for the application or applications under review.

(b) The Department shall issue as provided in this Article a certificate of need with or without conditions or reject the application within the review period.

(c) The Department shall promulgate rules establishing criteria for determining when it would not be practicable to complete a review within 90 days from receipt of a completed the beginning date of the review period for the application. If the Department finds that these criteria are met for a particular project, it may extend the review period for a period not to exceed 60 days and provide notice of such extension to all affected persons applicants.

~~" § 131E-186. Final decision Decision.--The Department shall send its decision along with written findings to the person proposing the new institutional health service and to the Health Systems Agency for the health service area in which the new service is proposed to be offered or developed. In the case of a final decision to "approve" or "approve with conditions" a proposal for a new institutional health service, the Department shall issue a certificate of need to the person proposing the new institutional health service.~~

(a) Within the prescribed time limits in G.S 131E-185, the Department shall issue a decision to "approve," "approve with conditions," or "deny," an application for a new institutional health service.

(b) Within five days after it makes a decision on an application, the Department shall provide written notice of all the findings and conclusions upon which it based its decision, including the criteria used by the Department in making its decision, to both the applicant and to the appropriate health systems agency.

~~" § 131E-187. Written notice of decision Issuance of a certificate of need.--The Department shall, within 15 days after it makes a final decision on an application, provide in writing to the applicant, to the appropriate Health Systems Agency and, upon request to affected persons, the findings and conclusions on which it based its decision, including but not limited to, the criteria used by the Department in making its decision.~~

(a) The Department shall issue a certificate of need within 35 days of the date of the decision referenced in G.S. 131E-186, when no request for a contested case hearing has been filed in accordance with G.S. 131E-188, and all applicable conditions of approval that can be satisfied before issuance of the certificate of need have been met.

(b) The Department shall issue a certificate of need within five days after a request for a contested case hearing has been withdrawn or the final agency decision has been made following a contested case hearing, and all applicable conditions of approval that can be satisfied before issuance of the certificate of need have been met.

" § 131E-188. Administrative and judicial review.--(a) After a decision of the Department to issue, deny or withdraw a certificate of need or exemption, any affected person, as defined in subsection (c) of this section, shall be entitled to a contested case hearing under Article 3 of Chapter 450A-150B of the General Statutes, if the Department receives a request therefor within 30 days after its decision. A petition for a contested case shall be filed within 30 days after the Department makes its decision. When a petition is filed, the Department shall send notification of the petition to the proponent of each application that was reviewed with the application for a certificate of need that is the subject of the petition.

A contested case shall be conducted in accordance with the following timetable:

(1) An administrative law judge or a hearing officer, as appropriate, shall be assigned within 15 days after a petition is filed.

(2) The parties shall complete discovery within 90 days after the assignment of the administrative law judge or hearing officer.

(3) The hearing at which sworn testimony is taken and evidence is presented shall be held within 45 days after the end of the discovery period.

(4) The administrative law judge or hearing officer shall make his recommended decision within 75 days after the hearing.

(5) The Department shall make its final decision within 30 days of receiving the recommended decision.

The administrative law judge or hearing officer assigned to a case may extend the deadlines in subdivisions (2) through (4) so long as the administrative law judge or hearing officer makes his recommended decision in the case within 270 days after the petition is filed. The Department may extend the deadline in subdivision (5) for up to 30 days by giving all parties written notice of the extension.

(a) As a condition precedent to proceeding with a contested case hearing on the approval of an applicant for a certificate of need, the petitioner shall deposit a bond with the clerk of superior court where the new institutional health service that is the subject of the petition is proposed to be located. The bond shall be secured by cash or its equivalent in an amount equal to five percent (5%) of the cost of the proposed new institutional health service that is the subject of the petition, but may not be less than five thousand dollars (\$5,000) and may not exceed fifty thousand dollars (\$50,000). A petitioner who received approval for a certificate of need and is contesting only a condition in the certificate is not required to file a bond under this

subsection.

The applicant who received approval for the new institutional health service that is the subject of the petition may bring an action against a bond filed under this subsection in the superior court of the county where the bond was filed. Upon finding that the petition for a contested case was frivolous or filed to delay the applicant, the court may award the applicant part or all of the bond filed under this subsection.

(b) Any affected person who was a party in a contested case hearing shall be entitled to judicial review of all or any portion of any final decision of the Department in the following manner. The appeal shall be to the Court of Appeals as provided in G.S. 7A-29(a). The procedure for the appeal shall be as provided by the rules of appellate procedure. The appeal of the final decision of the Department shall be taken within 30 days of the receipt of the written notice of decision required by G.S. 131E-187 and notice of appeal shall be filed with the Division of ~~Facilities~~ Facility Services, Department of Human Resources and with all other affected persons who were parties to the contested hearing.

(b1) Before filing an appeal of a decision by the Department granting a certificate of need, the affected person shall deposit a bond with the Clerk of the Court of Appeals. The bond shall be secured by cash or its equivalent in an amount equal to five percent (5%) of the cost of the proposed new institutional health service that is the subject of the appeal, but may not be less than five thousand dollars (\$5,000) and may not exceed fifty thousand dollars (\$50,000). A holder of a certificate of need who is appealing only a condition in the certificate is not required to file a bond under this subsection.

If the Court of Appeals finds that the appeal was frivolous or filed to delay the applicant, the court shall remand the case to the superior court of the county where a bond was filed for the contested case hearing on the certificate of need. The superior court may award the holder of the certificate of need part or all of the bond. The court shall award the holder of the certificate of need reasonable attorney fees and costs incurred in the appeal to the Court of Appeals.

(c) The term 'affected persons' includes: the applicant; the health systems agency for the health service area in which the proposed project is to be located; health systems agencies serving contiguous health service areas or located within the same standard metropolitan statistical area; any person residing within the geographic area served or to be served by the applicant; any person who regularly uses health ~~care~~ service facilities within that geographic area; health ~~care~~ service

facilities and health maintenance organizations (HMOs) located in the health service area in which the project is proposed to be located, which provide services similar to the services of the facility under review; health ~~care~~ service facilities and HMOs which, prior to receipt by the agency of the proposal being reviewed, have formally indicated an intention to provide similar services in the future; third party payers who reimburse health ~~care~~ service facilities for services in the health service area in which the project is proposed to be located; and any agency which establishes rates for health ~~care~~ service facilities or HMOs located in the health service area in which the project is proposed to be located.

"§ 131E-189. *Withdrawal of a certificate of need.*--(a) The Department shall specify in each certificate of need the time the holder has to make the service or equipment available or to complete the project and the timetable to be followed. The timetable shall be the one proposed by the holder of the certificate of need unless ~~at the time the certificate of need is issued the Department determines by a preponderance of the evidence that the timetable proposed by the holder is unreasonable and that a different timetable should be followed by the holder~~ the Department specifies a different timetable in its decision letter. The holder of the certificate shall submit such periodic reports on his progress in meeting the timetable as may be required by the Department. ~~If no progress report is provided or, after reviewing the progress, the Department determines that the holder of the certificate is not meeting the timetable and the holder cannot demonstrate that it is making good faith efforts to meet the timetable,~~ the Department may, after considering any recommendation made by the appropriate health systems agency, withdraw the certificate. If the Department determines that the holder of the certificate is making a good faith effort to meet the timetable, the Department may, at the request of the holder, extend the timetable for a specified period.

(b) ~~The Department may withdraw any certificate of need which was issued subject to a condition or conditions, if the holder of the certificate fails to satisfy such condition or conditions develop and operate the service consistent with the representations made in the application or with any condition or conditions the Department placed on the certificate of need.~~

(c) The Department may immediately withdraw any certificate of need if the holder of the certificate, before completion of the project or operation of the facility, transfers ownership or control of the facility. Any transfer after that time will be subject to the requirement that the

service be provided consistent with the representations made in the application and any applicable conditions the Department placed on the certificate of need. Transfers resulting from personal illness or other good cause, as determined by the Department, shall not result in withdrawal if the Department receives prior written notice of the transfer and finds good cause. Transfers resulting from death shall not result in withdrawal.

"§ 131E-190. *Enforcement and sanctions.*--(a) Only those new institutional health services which are found by the Department to be needed as provided in this Article and granted certificates of need shall be offered or developed within the State.

(b) No formal commitments made for financing, construction, or acquisition regarding the offering or development of a new institutional health service shall be made by any person unless a certificate of need for such service or activities has been granted.

(c) Nothing in this Article shall be construed as terminating the P.L. 92-603, Section 1122, capital expenditure program or the contract between the State of North Carolina and the United States under that program. The sanctions available under that program and contract, with regard to the determination ~~or of~~ whether the amounts attributable to an applicable project or capital expenditure project should be included or excluded in determining payments to the proponent under Titles V, XVIII, and XIX of the Social Security Act, shall remain available to the State.

(d) If any ~~health care facility person~~ proceeds to offer or develop a new institutional health service without having first obtained a certificate of need for such services, the penalty for such violation of this Article and rules ~~and regulations~~ hereunder ~~is~~ may include the withholding of federal and State funds under Titles V, XVIII, and XIX of the Social Security Act for reimbursement of capital and operating expenses related to the provision of the new institutional health service.

(e) The Medical Care Commission may revoke or suspend the license of any person who ~~If any health care facility~~ proceeds to offer or develop a new institutional health service without having first obtained a certificate of need for such services, ~~the licensure for such facility may be revoked or suspended by the Medical Care Commission, or the Commission for Health Services, as appropriate.~~

(f) The Department may assess a civil penalty ~~civil penalty~~ of not more than twenty thousand dollars (\$20,000) ~~may be assessed by the Department~~ against any person who knowingly offers or develops any new institutional health service within the meaning of this Article without a certificate of need issued under this Article and the rules

~~and regulations pertaining thereto, or in violation of the terms of such a certificate, each time the service is provided in violation of this provision. In determining the amount of the penalty the Department shall consider the degree and extent of harm caused by the violation and the cost of rectifying the damage. A person who is assessed a penalty shall be notified of the penalty by registered or certified mail. The notice shall state the reasons for the penalty. If a person fails to pay a penalty, the Department shall refer the matter to the Attorney General for collection. The Department may assess the penalties provided for in this subsection. Any person assessed shall be notified of the assessment by registered or certified mail, and the notice shall specify the reasons for the assessment. If the person assessed fails to pay the amount of the assessment to the Department within 30 days after receipt of notice, or such longer period, not to exceed 180 days, as the Department may specify, the Department may institute a civil action in the superior court of the county in which the violation occurred or, in the discretion of the Department, in the superior court of the county in which the person assessed has his principal place of business, to recover the amount of the assessment. In any such civil action, the scope of the court's review of the Department's action (which shall include a review of the amount of the assessment), shall be as provided in Chapter 150A of the General Statutes. For the purpose of this subsection, the word 'person' shall not include an individual in his capacity as an officer, director, or employee of a person as otherwise defined in this Article.~~

(g) No agency of the State or any of its political subdivisions may appropriate or grant funds or financially assist in any way a person, applicant, or facility which is or whose project is in violation of this Article.

(h) If any ~~health care facility~~ person proceeds to offer or develop a new institutional health service without having first obtained a certificate of need for such services, the Secretary of Human Resources or any person aggrieved, as defined by G.S. ~~150A-2(6)~~ 150B-2(6), may bring a civil action for injunctive relief, temporary or permanent, against the person offering, developing or operating any new institutional health service. The action may be brought in the superior court of any county in which the health service facility is located or in the superior court of Wake County.

(i) If the Department determines that the recipient of a certificate of need, or its successor, is operating a service which materially differs from the representations made in its application for that certificate of need, the Department may bring an action in Wake County Superior

Court or the superior court of any county in which the certificate of need is to be utilized for injunctive relief, temporary or permanent, requiring the recipient, or its successor, to materially comply with the representations in its application. The Department may also bring an action in Wake County Superior Court or the superior court of any county in which the certificate of need is to be utilized to enforce the provisions of this subsection and G.S. 131E-181(b) and the regulations rules adopted in accordance with this subsection and G.S. 131E-181(b).

~~"§ 131E-191. Venue.--(a) Any action brought by a "person aggrieved" as defined by G.S. 150B-2(6), to enforce the provisions of this Article against any health care facility as defined in G.S. 131E-176(9), or its agents or employees, may be brought in the superior court of any county in which the cause of action arose or in the county in which the health care facility is located, or in Wake County.~~

~~(b) An action brought by a "party" as defined in G.S. 150A-2(5), except any "affected person" who was a party to a contested case hearing who must bring an action in the North Carolina Court of Appeals pursuant to G.S. 131E-188(b), who has exhausted all administrative remedies made available to that party by statute or rules and regulations, may be brought in the Superior Court of Wake County at any time after a final decision by the Department. Such action must be filed not later than 30 days after a written copy of the final decision by the Department is given by personal service or registered or certified mail to the person seeking judicial review.~~

~~"§ 131E-192 to 131E-199. Reserved for future codification purposes."~~

Sec. 2. The provisions of this act are severable, and if any provision of this act is held invalid by a court of competent jurisdiction, the invalidity shall not affect other provisions of this act that can be given effect without the invalid provision.

Sec. 3. This act shall become effective July 1, 1987, and shall apply to all new institutional health services that are proposed on and after that date, but does not apply to applications for certificates of need which begin review, or to projects for which certificates of need were issued, before that date. This act supersedes all previous acts that were to become effective at any time after the effective date of this act.

In the General Assembly read three times and ratified this the 30th day of June, 1987.

H.B. 1094

CHAPTER 512

AN ACT PERTAINING TO ALTERING OR CHANGING ENGINE AND OTHER NUMBERS.

*The General Assembly of North Carolina enacts:***Section 1.** G.S. 20-109(a) reads as rewritten:

"§ 20-109. Altering or changing engine or other numbers.--(a) It shall be unlawful and constitute a ~~misdemeanor~~ felony for:

- (1) Any person to willfully deface, destroy, remove, cover, or alter the manufacturer's serial number, transmission number, or engine number; or
- (2) Any vehicle owner to knowingly permit the defacing, removal, destroying, covering, or alteration of the serial number, transmission number, or engine number; or
- (3) Any person except a licensed vehicle manufacturer as authorized by law to place or stamp any serial number, transmission number, or engine number upon a vehicle, other than one assigned thereto by the Division; or
- (4) Any vehicle owner to knowingly permit the placing or stamping of any serial number or motor number upon a motor vehicle, except such numbers as assigned thereto by the Division.

A violation of this subsection shall be punishable ~~by a fine or imprisonment not to exceed two years, or both, in the discretion of the court~~ as a Class J felony."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 29th day of June, 1987.

H.B. 1246

CHAPTER 513

AN ACT TO REDUCE THE WAITING PERIOD FOR APPLICATIONS FOR RETIREMENT FROM THIRTY DAYS TO ONE DAY IN THE LEGISLATIVE RETIREMENT SYSTEM, LOCAL GOVERNMENTAL EMPLOYEES' RETIREMENT SYSTEM, TEACHERS' AND STATE EMPLOYEES' RETIREMENT SYSTEM AND CONSOLIDATED JUDICIAL RETIREMENT SYSTEM.

The General Assembly of North Carolina enacts:

Section 1. G.S. 120-4.21(a), G.S. 120-4.22(a), G.S. 128-24(5), G.S. 128-27(a), G.S. 128-27(c), G.S. 135-3(8), G.S. 135-5(a), G.S. 135-5(c), G.S. 135-57 and G.S. 135-59 are amended by

substituting the phrase "one day nor more than 90 days" wherever the phrase "30 nor more than 90 days", the phrase "30 days nor more than 90 days", or the phrase "30 and not more than 90 days" appear therein.

Sec. 2. This act shall become effective upon ratification.

In the General Assembly read three times and ratified this the 29th day of June, 1987.

S.B. 130

CHAPTER 514

AN ACT TO AMEND THE CITY OF RALEIGH FACILITY FEE
ENABLING LEGISLATION.

The General Assembly of North Carolina enacts:

Section 1. Section 22(84) of the Charter of the City of Raleigh, being Chapter 1184, Session Laws of 1949, as added by Chapter 498 of the Session Laws of 1985 is amended by adding a new sentence at the end to read:

"Nothing contained in subdivisions (80), (81) and (82) shall be construed to prevent the use of facility fee proceeds to retire debt which was used to fund facility fee eligible project."

Sec. 2. Section 22(80) of the Charter of the City of Raleigh, being Chapter 1184, Session Laws of 1949, as added by Chapter 498 of the Session Laws of 1985 is amended by rewriting the third sentence thereof beginning with the words "Where appropriate" to read as follows:

"Where appropriate, approval of site plans may be conditioned to include requirements that street, utility, and drainage rights-of-way, open space and recreation areas be dedicated or reserved for the public, or street, drainage, recreation, and utility improvements be made to the same extent as required by the local subdivision regulations."

Sec. 3. Section 22(81)(c)(4) of the Charter of the City of Raleigh, being Chapter 1184, Session Laws of 1949, as added by Chapter 498 of the Session Laws of 1985, is amended by rewriting the second sentence thereof to read as follows:

"Expenditures from such trust fund shall be matched by an equal sum of money approved from non fee sources and shall be spent for road or drainage projects located in the same zone in which the fees were collected."

Sec. 4. Section 22(82)(a)(2) of the Charter of the City of Raleigh, being Chapter 1184, Session Laws of 1949, as added by Chapter 498 of the Session Laws of 1985 is hereby amended by rewriting the first sentence thereof to read as follows:

"'Open Space Project' shall mean either the acquisition of land for parks, greenways or open spaces or the construction of recreation facilities."

Sec. 5. Section 22(82)(c)(4) of the Charter of the City of Raleigh, being Chapter 1184, Session Laws of 1949, as added by Chapter 498 of the Session Laws of 1985 is amended by rewriting the second sentence thereof to read as follows:

"Expenditures from such trust fund shall be matched by an equal sum of money appropriated from non fee sources and shall be spent for open space projects located in the same zone in which the fees were collected."

Sec. 6. Section 22 of the Charter of the City of Raleigh, being Chapter 1184, Session Laws of 1949, captioned "Express Powers Enumerated", is amended by adding a new subdivision thereto to read as follows:

"(86) The City Council may, as part of its land development ordinances, provide that in lieu of required street right-of-way improvements, a developer may be required to provide funds that the city may use for the construction of right-of-way improvements to serve the occupants, residents, or invitees of the subdivision or development and these funds may be used for improvements which serve more than one subdivision or development within the area. All funds received by the city pursuant to this paragraph shall be used only for development of right-of-way improvements, including design, land acquisition, and construction. However, the city may undertake these activities in conjunction with the Department of Transportation under an agreement between the city and the North Carolina Department of Transportation. The ordinance may require a combination of partial payment of funds and partial dedication of constructed improvements when the governing body of the city determines that a combination is in the best interest of the citizens of the area to be served."

Sec. 7. This act shall apply only to the City of Raleigh.

Sec. 8. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 30th day of June, 1987.

S.B. 413

CHAPTER 515

AN ACT TO ALLOW THE ISSUANCE OF BEER/WINE PERMITS FOR CERTAIN RECREATION/SPORTS DISTRICTS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 18B-1006 is amended by adding a new subsection to read:

"(j) Recreation/Sports Districts. The Commission may issue permits for the sale of malt beverages and unfortified wine in recreation/sports districts when they are wholly located in a County where there are two or more municipalities that are wholly located in the County that allow the sale of alcoholic beverages while the sale of any alcoholic beverages is prohibited in the nonincorporated areas of the County, and the area to be included in the recreation/sports district has been previously identified by one of those municipalities through a resolution of intent for annexation. The issuance of the permits shall be upon the formal written request of the City indicating the intent to annex the area or upon formal written request of the County Commissioners with the request designating the geographic boundaries of the district in which the permits may be issued."

Sec. 2. For the purposes of this act a recreation/sports district shall not exceed one-half mile in diameter and shall host at least five sporting events each year.

Sec. 3. This act shall become effective upon ratification.

In the General Assembly read three times and ratified this the 30th day of June, 1987.

S.B. 480

CHAPTER 516

AN ACT TO PERMIT REAL ESTATE LICENSE SURRENDER, TO SIMPLIFY RECOVERY FUND CLAIMS, AND TO MAKE CERTAIN VIOLATIONS OF THE TIME SHARE ACT CRIMINAL OFFENSES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 93A-6(a) is amended by deleting the first sentence of the second paragraph which reads:

"All such hearings shall be conducted in accordance with the provisions of Chapter 150A of the General Statutes."

Sec. 2. G.S. 93A-6 is amended by adding a new subsection to read:

"(e) When a person or entity licensed under this Chapter is accused of any act, omission, or misconduct which would subject the licensee to disciplinary action, the licensee, with the consent and approval of the Commission, may surrender his or its license and all the rights and privileges pertaining to it for a period of time established by the Commission. A person or entity who surrenders his or its license shall not thereafter be eligible for or submit any application for licensure as a real estate broker or salesman during the

period of license surrender."

Sec. 3. G.S. 93A-16 is amended by adding a new subsection to read:

"(d) The Commission shall have the authority to adopt reasonable rules and procedures not inconsistent with the provisions of this Article, to provide for the orderly, fair and efficient administration and payment of monies held in the Real Estate Recovery Fund."

Sec. 4. G.S. 93A-16(a) is amended by deleting from the last sentence the phrase "person licensed" and substituting the phrase "real estate broker or salesman licensed".

Sec. 5. G.S. 93A-16(b) is amended by rewriting the second sentence to read:

"Thereafter, the Commission may transfer to the Real Estate Recovery Fund additional sums of money from whatever funds the Commission may have, provided that, if on December 31 of any year the amount remaining in the fund is less than fifty thousand dollars (\$50,000), the Commission may determine that each person or entity licensed under this Chapter, when renewing his or its license, shall pay in addition to his license renewal fee, a fee not to exceed ten dollars (\$10.00) per broker and five dollars (\$5.00) per salesman as shall be determined by the Commission for the purpose of replenishing the fund."

Sec. 6. G.S. 93A-17 is rewritten to read:

"§ 93A-17. *Grounds for payment; notice and application to Commission.*--(a) An aggrieved person who has suffered a direct monetary loss by reason of the conversion of trust funds by a real estate broker or salesman licensed under this Chapter shall be eligible to recover, subject to the limitations of this Article, the amount of trust funds converted and which is otherwise unrecoverable provided that:

- (1) The act or acts of conversion which form the basis of the claim for recovery occurred on or after September 1, 1979;
- (2) The aggrieved person has sued the real estate broker or salesman in a court of competent jurisdiction and has filed with the Commission written notice of such lawsuit within 60 days after its commencement unless the claim against the Real Estate Recovery Fund is for an amount less than one thousand five hundred dollars (\$1,500), excluding attorneys fees, in which case the notice may be filed within 60 days after the termination of all judicial proceedings including appeals;

- (3) The aggrieved person has obtained final judgment in a court of competent jurisdiction against the real estate broker or salesman on grounds of conversion of trust funds arising out of a transaction which occurred when such broker or salesman was licensed and acting in a capacity for which a license is required; and
- (4) Execution of the judgment has been attempted and has been returned unsatisfied in whole or in part.

Upon the termination of all judicial proceedings including appeals, and for a period of one year thereafter, a person eligible for recovery may file a verified application with the Commission for payment out of the Real Estate Recovery Fund of the amount remaining unpaid upon the judgment which represents the actual and direct loss sustained by reason of conversion of trust funds. A copy of the judgment and return of execution shall be attached to the application and filed with the Commission. The applicant shall serve upon the judgment debtor a copy of the application and shall file with the Commission an affidavit or certificate of such service.

(b) For the purposes of this Article, the term 'trust funds' shall include all earnest money deposits, down payments, sales proceeds, tenant security deposits, undisbursed rents and other such monies which belong to another or others and are held by a real estate broker or salesman acting in that capacity. Trust funds shall also include all time share purchase monies which are required to be held in trust by G.S. 93A-45(c) during the time they are, in fact, so held. Trust funds shall not include, however, any funds held by an independent escrow agent under G.S. 93A-42 or any funds which the court may find to be subject to an implied, constructive or resulting trust.

(c) For the purposes of this Article, the terms 'licensee', 'broker', and 'salesman' shall include only individual persons licensed under this Chapter as brokers and salesmen and shall not include a time share developer, time share project, independent escrow agent, corporation or other entity licensed under this Chapter."

Sec. 7. G.S. 93A-18 is amended by deleting from the first sentence the word "court" and inserting in place thereof the word "Commission" and by inserting in subdivision (2) the word "judicial" between the words "all" and "proceedings".

Sec. 8. G.S. 93A-19(a) is rewritten to read:

"§ 93A-19. *Response and defense by Commission and judgment debtor; proof of conversion.*--(a) Whenever the Commission proceeds upon an application as set forth in this Article, counsel for the Commission may defend such action on behalf of the fund and shall

have recourse to all appropriate means of defense, including the examination of witnesses. The judgment debtor may defend such action on his own behalf and shall have recourse to all appropriate means of defense, including the examination of witnesses. Within 30 days after service of the application, counsel for the Commission and the judgment debtor may file responses thereto setting forth answers and defenses. Responses shall be filed with the Commission and copies shall be served upon every party by the filing party. If at any time it appears there are no triable issues of fact and the application for payment from the fund is without merit, the Commission shall dismiss the application. A motion to dismiss may be supported by affidavit of any person or persons having knowledge of the facts and may be made on the basis that the application or the judgment referred to therein do not form a basis for meritorious recovery within the purview of G.S. 93A-17, that the applicant has not complied with the provisions of this Article, or that the liability of the fund with regard to the particular licensee or transaction has been exhausted; provided, however, notice of such motion shall be given at least 10 days prior to the time fixed for hearing."

Sec. 9. G.S. 93A-20 is rewritten to read:

"§ 93A-20. *Order directing payment out of fund; compromise of claims.*--Applications for payment from the Real Estate Recovery Fund shall be heard and decided by a majority of the members of the Commission. If, after a hearing, the Commission finds the claim should be paid from the fund, the Commission shall enter an order requiring payment from the fund of whatever sum the Commission shall find to be payable upon the claim in accordance with the limitations contained in this Article.

Subject to Commission approval, a claim based upon the application of an aggrieved person may be compromised; however, the Commission shall not be bound in any way by any compromise or stipulation of the judgment debtor."

Sec. 10. G.S. 93A-21(a) is amended by deleting from the catch line the words "Maximum Liability;" and inserting in their place the word "Limitations;" and by inserting into subsection (a) a new subdivision, (4), as follows:

"(4) The fund shall not be liable for payment of any judgment awards of consequential damages, multiple or punitive damages, civil penalties, incidental damages, special damages, interest, costs of court or action or other similar awards."

Sec. 11. The first sentence of G.S. 93A-21(b) is amended by deleting the word "court" and inserting in its place the word "Commission".

Sec. 12. The second sentence of G.S. 93A-21(b) is amended by deleting the words "court", "action" and "adjudicated and settled" and inserting in their places the words "Commission", "proceeding" and "resolved", respectively.

Sec. 13. The first sentence of G.S. 93A-21(c) is amended by deleting the words and figures "one thousand dollars (\$1,000)" and the word "court" and inserting in their places the words and figures "one thousand five hundred dollars (\$1,500)" and "Commission", respectively.

Sec. 14. G.S. 93A-22 is amended by deleting the words "an order by the court" and inserting in their place the words "the order".

Sec. 15. G.S. 93A-23 is amended by deleting the words "When, upon the order of the court," and inserting in their place the word "When".

Sec. 16. G.S. 93A-40 is amended by inserting an "(a)" before the first sentence and by adding a new subsection, (b), as follows:

"(b) A person responsible as general partner, corporate officer, joint venturer or sole proprietor who intentionally acts as a time share developer, allowing the offering of sale or the sale of time shares to a purchaser, without first obtaining registration of the time share project under this Article shall be guilty of a Class I felony."

Sec. 17. G.S. 93A-54(a) is hereby amended by deleting the fourth sentence which reads:

"All such hearings shall be conducted in accordance with the provisions of Chapter 150A of the General Statutes."

Sec. 18. G.S. 93A-54 is amended by adding a new subsection, as follows:

"(e) When a licensee is accused of any act, omission, or misconduct under this Article which would subject the licensee to disciplinary action, the licensee may, with the consent and approval of the Commission, surrender his or its license and all the rights and privileges pertaining to it for a period of time to be established by the Commission. A licensee who surrenders his or its license shall not be eligible for, or submit any application for, licensure as a real estate broker or salesman or registration of a time share project during the period of license surrender. For the purposes of this section, the term licensee shall include a time share developer."

Sec. 19. G.S. 93A-56 is amended by inserting the words and figures "G.S. 93A-40(b) and" between the words "in" and "G.S. 93A-58,".

Sec. 20. G. S. 93A-58(b) is amended by adding a new sentence at the end to read:

"A person responsible as general partner, corporate officer, joint venturer or sole proprietor of the developer of a time share project shall be guilty of a Class I felony if he intentionally allows the offering for sale or the sale of time share to purchasers without first designating a time share registrar."

Sec. 21. This act shall become effective October 1, 1987, except Section 5 which is effective upon ratification.

In the General Assembly read three times and ratified this the 30th day of June, 1987.

S.B. 555

CHAPTER 517

AN ACT TO AMEND CHAPTER 159D OF THE GENERAL STATUTES PERTAINING TO INDUSTRIAL AND POLLUTION CONTROL FACILITIES POOL PROGRAM FINANCING ACT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 159D-1 is amended by deleting the word "Federal" and inserting the word "Pool".

Sec. 2. G.S. 159D-2 is amended by adding a new subsection to read:

(c1) The General Assembly further finds that certain provisions of federal tax law, economies of scale and credit market conditions make it advantageous for counties in North Carolina to be authorized to create a single authority with the legal capacity to combine separate financings into one or more pools that may be offered for sale on more favorable terms than any single financing standing alone."

Sec. 3. G.S. 159D-2(d) is amended by striking the word "federal" appearing immediately after the word "with" and immediately before the word "programs" and inserting in lieu thereof the word "pool".

Sec. 4. G.S. 159D-3(6) is rewritten to read:

"(6) 'Pool program' shall mean a program of the authority whereby separate financings for obligors are combined into one or more pools for purposes of sale. The credit of such financings or the pool may be enhanced by participation in a federal program, by a guaranty such as a surety bond, insurance or a letter of credit, by additional collateral or by any other device, fund or guaranty by any person other than the authority, under which payment of bonds or the

obligations of an obligor under a financing agreement shall be guaranteed, in whole or in part, by such person or persons."

Sec. 4.1 G.S. 159D-3(9) is rewritten to read:

"(9) 'Obligor' shall mean collectively the operator and any others (including, but not by way of limitation, any other person, collateral device or fund that shall be obligated to pay) who or which shall be obligated under a financing agreement or guaranty agreement or other contract or agreement to make payments to, or for the benefit of, the holders of bonds of the authority. Any requirement of an obligor may be satisfied by any one or more persons who are defined collectively by this Chapter as the obligor."

Sec. 5. G.S. 159D-4(a) is amended by rewriting the first paragraph to read:

"The governing bodies of two or more counties are hereby authorized to create by resolution a political subdivision and body corporate and politic of the State known as 'The North Carolina Industrial Facilities and Pollution Control Financing Authority', in order to effectuate in the most economical manner the acquisition, construction and financing of projects through pool programs."

Sec. 6. G.S. 159D-7 is amended as follows:

(1) Subdivision (1) a. in the second unnumbered paragraph is amended by striking the words and figure "twenty percent (20%)", appearing in line 5 and inserting in lieu thereof the words and figure "ten percent (10%)".

(2) by inserting after subdivision (2) in the second unnumbered paragraph a new subdivision to read:

"(2a) In the case of a hazardous waste facility or low-level radioactive waste facility which is used as a reduction, recovery or recycling facility, that such project will further the waste management goals of North Carolina and will not have an adverse effect upon public health or a significant adverse effect on the environment; and"

(3) the third unnumbered paragraph is amended by inserting a new sentence to begin at the end of the first sentence which ends on line 9 thereof which reads:

"In no case shall the Secretary of Commerce make the findings required by subdivision (2a) unless he shall have first received a certification from the Department of Human Resources that the proposed project is environmentally sound, will not have an adverse effect on public health and will further the waste management goals of North Carolina."

(d) the sixth and last paragraph is amended by adding a sentence at the end to read:

"Any certificate of approval with respect to a project which has become effective pursuant to G.S. 159C-7 shall be deemed to satisfy the requirements of this section to the extent that the findings made by the Secretary pursuant to G.S. 159C-7 are consistent with the findings required to be made by the Secretary pursuant hereto."

Sec. 7. G.S. 159D-11 is amended as follows:

(1) Subdivision (1) of the first unnumbered paragraph is repealed.

(2) Subdivision (2) of the first unnumbered paragraph is amended by inserting the words "and interest" immediately after the word "any," and immediately before the word "on" appearing in line 3 thereof.

(3) The third unnumbered paragraph is hereby amended by inserting the words and punctuation ", if in the nature of a lease agreement," in line #1 thereof immediately after the word "agreement" and immediately before the word "shall."

(4) Subdivision (4) of the fourth unnumbered paragraph is amended by inserting the words "or fore-closure" immediately after the word "sale" and immediately before the word "of".

(5) by inserting a new unnumbered paragraph between unnumbered paragraphs four and five to read:

"The authority's interest in a project under a financing agreement may be that of owner, lessor, lessee, conditional or installment vendor, mortgagor, mortgagee, secured party or otherwise, but the authority need not have any ownership or possessory interest in the project."

Sec. 8. G.S. 159D-19(a) is amended by inserting the words and figures "or under the provisions of Chapter 159C of the General Statutes," in line four thereof immediately after the word "Chapter" and immediately before the word "including".

Sec. 9. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 30th day of June, 1987.

S.B. 680

CHAPTER 518

AN ACT TO AMEND G.S. 14-404 AND G.S. 14-409.3
PERTAINING TO FIREARMS PERMITS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 14-404 reads as rewritten:

" § 14-404. *Issuance or refusal of permit; appeal from refusal; grounds for refusal; sheriff's fee.*--Upon application, the sheriff shall issue such license or permit to a resident of that county unless the purpose of the permit is for collecting, in which case a sheriff can issue a permit to a nonresident when the sheriff shall have fully satisfied himself by affidavits, oral evidence, or otherwise, as to the good moral character of the applicant therefor, and that such person, firm, or corporation desires the possession of the weapon mentioned for (i) the protection of the home, business, person, family or property, (ii) target shooting, (iii) collecting, or (iv) hunting. If said sheriff shall not be so fully satisfied, he may, for good cause shown, decline to issue said license or permit and shall provide to said applicant within seven days of such refusal a written statement of the reason(s) for such refusal. An appeal from such refusal shall lie by way of petition to the chief judge of the district court for the district in which the application was filed. The determination by the court, on appeal, shall be upon the facts, the law, and the reasonableness of the sheriff's refusal, and shall be final. A permit may not be issued to the following persons: (i) one who is under an indictment or information for or has been convicted in any state, or in any court of the United States, of a felony (other than an offense pertaining to antitrust violations, unfair trade practices, or restraints of trade), except that if a person has been convicted and later pardoned or is not prohibited from purchasing a firearm under the Felony Firearms Act (Article 54A of this Chapter), he may obtain a permit; (ii) one who is a fugitive from justice; (iii) one who is an unlawful user of or addicted to marijuana or any depressant, stimulant, or narcotic drug (as defined in 21 U.S.C. section 802); (iv) one who has been adjudicated incompetent on the ground of mental illness or has been committed to any mental institution. Provided, that nothing in this Article shall apply to officers authorized by law to carry firearms if such officers identify themselves to the vendor or donor as being officers authorized by law to carry firearms and state that the purpose for the purchase of the firearms is directly related to the law officers' official duties. The sheriff shall charge for his services upon issuing such license or permit a fee of five dollars (\$5.00). Each applicant for any such license or permit shall be informed by said sheriff within 30 days of the date of such application whether such license or permit will be granted or denied and, if granted, such license or permit shall be immediately issued to said applicant."

Sec. 2. G.S. 14-409.3 reads as rewritten:

" § 14-409.3. *Issuance or refusal of permit; appeal from refusal; grounds for refusal; clerk's fee.*--Upon application, the clerk of the superior court shall issue such license or permit to a resident of that county, unless the purpose of the permit is for collecting, in which case a clerk can issue a permit to a nonresident, when the clerk shall have fully satisfied himself by affidavits, oral evidence, or otherwise, as to the good moral character of the applicant therefor, and that such person, firm, or corporation desires the possession of the weapon mentioned for (i) the protection of the home, business, person, family or property, (ii) target shooting, (iii) collecting, or (iv) hunting. If said clerk of the superior court shall not be so fully satisfied, he may, for good cause shown, decline to issue said license or permit and shall provide to said applicant within seven days of such refusal a written statement of the reason(s) for such refusal. An appeal from such refusal shall lie by way of petition to the chief judge of the district court for the district in which the application was filed. The determination by the court, on appeal, shall be upon the facts, the law, and the reasonableness of the clerk of the superior court's refusal, and shall be final. A permit may not be issued to the following persons: (i) one who is under an indictment or information for or has been convicted in any state, or in any court of the United States, of a felony (other than an offense pertaining to antitrust violations, unfair trade practices, or restraints of trade), except that if a person has been convicted and later pardoned or is not prohibited from purchasing a firearm under the Felony Firearms Act (Article 54A of this Chapter), he may obtain a permit; (ii) one who is a fugitive from justice; (iii) one who is an unlawful user of or addicted to marijuana or any depressant, stimulant, or narcotic drug (as defined in 21 U.S.C. section 802); (iv) one who has been adjudicated incompetent on the ground of mental illness or has been committed to any mental institution. Provided, that nothing in this Article shall apply to officers authorized by law to carry firearms if such officers identify themselves to the vendor or donor as being officers authorized by law to carry firearms and state that the purpose for the purchase of the firearms is directly related to the law officers' official duties. The clerk of the superior court shall charge for his services upon issuing such license or permit a fee of five dollars (\$5.00). Each applicant for any such license or permit shall be informed by said clerk of the superior court within 30 days of the date of such application whether such license or permit will be granted or denied and, if granted, such

license or permit shall be immediately issued to said applicant."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 30th day of June, 1987.

S.B. 818

CHAPTER 519**AN ACT CREATING A CIVIL CAUSE OF ACTION AGAINST SHOPLIFTERS AND EMPLOYEES WHO STEAL FROM THEIR EMPLOYERS.**

The General Assembly of North Carolina enacts:

Section 1. Article 43 of Chapter 1 of the General Statutes is amended by adding a new section to read:

"§ 1-538.2. *Civil liability for shoplifting and theft by employee.*--(a) Any person, other than an unemancipated minor, who commits an act that is punishable under G.S. 14-72.1 or G.S. 14-74 is liable for civil damages to the owner of the property. In any action brought by the owner of the property he is entitled to recover the value of the goods or merchandise, if the goods or merchandise have been destroyed, or any loss of value to the goods or merchandise, if the goods or merchandise were recovered, or the amount of any money lost by reason of the embezzlement or fraud of an employee. In addition to the above, the owner of the property is entitled to recover any consequential damages, and punitive damages, together with reasonable attorneys fees. If damages are assessed against the defendant, in favor of the plaintiff, the amount established for actual or consequential damages shall be trebled. The total of all damages awarded to a plaintiff against a defendant in an action under this section shall not exceed one thousand dollars (\$1,000).

(b) The parent or legal guardian, having the care, custody and control of an unemancipated minor who commits an act punishable under G.S. 14-72.1 or G.S. 14-74, is civilly liable to the owner of the property obtained by the act if such parent or legal guardian knew or should have known of the propensity of the child to commit such an act; and had the opportunity and ability to control the child, and made no reasonable effort to correct or restrain the child. In an action brought against the parent or legal guardian by the owner, the owner is entitled to recover the amounts specified in subsection (a) except punitive damages.

(c) A person may not be found liable under this section unless a sign was conspicuously displayed in the place of business at the time the act alleged in the action occurred stating that civil liability for

shoplifting and for theft by an employee is authorized under this section. An action may be brought under this section regardless of whether a criminal action is brought or a criminal conviction is obtained for the act alleged in the civil action."

(d) Nothing contained in this act shall prohibit recovery upon any other theory in the law.

Sec. 2. This act shall become effective October 1, 1987, and applies to acts committed on or after that date.

In the General Assembly read three times and ratified this the 30th day of June, 1987.

S.B. 865

CHAPTER 520**AN ACT REGARDING ELIGIBILITY FOR TRANSPORTER PLATES.**

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-79.2(a) reads as rewritten:

"(a) A person engaged in a business requiring the limited operation of motor vehicles to facilitate the manufacture, construction ~~or~~, rebuilding, or delivery of new or used truck cabs or bodies between manufacturer, dealer, seller, or purchaser, or the foreclosure or repossession of motor vehicles, or the pickup and delivery of motor vehicles to be prepared for sale by dealers, or a public utility, as defined in G.S. 62-3(23)a, engaged in the movement of replaced vehicles for sale, may apply to the Commissioner for special registration to be issued to and used by the person or utility upon the following conditions:

- (1) Application for Registration. Only one application shall be required from each person, and such application for registration under this section shall be filed with the Commissioner of Motor Vehicles in such form and detail as the Commissioner shall prescribe, setting forth:
 - a. The name and residence address of applicant; if an individual, the name under which he intends to conduct business; if a partnership, the name and residence address of each member thereof, and the name under which the business is to be conducted; if a corporation, the name of the corporation and the name and residence address of each of its officers.
 - b. The complete address or addresses of the place or places where the business is to be conducted.
 - c. Such further information as the Commissioner may require.

- (2) Applications for registration under this section shall be verified by the applicant, and the Commissioner may require the applicant for registration to appear at such time and place as may be designated by the Commissioner for examination to enable him to determine the accuracy of the facts set forth in the written application, either for initial registration or renewal thereof.
- (3) Fees. The annual fee for such registration under this section or renewal thereof shall be nineteen dollars (\$19.00), plus an annual fee of six dollars (\$6.00) for each set of plates. The application for registration and number plates shall be accompanied by the required annual fee. There shall be no refund of registration fee or fees for number plates in the event of suspension, revocation or voluntary cancellation of registration. There shall be no quarterly reduction in fees under this section.
- (4) Issuance of Certificate. If the Commissioner approves the application, he shall issue a registration certificate in such form as he may prescribe. A registrant shall notify the Commissioner of any change of address of his principal place of business within 30 days after such change is made, and the Commissioner shall be authorized to cancel the registration upon failure to give such notice.
- (5) Use. Transporter number plates issued under this section may be transferred from vehicle to vehicle, but shall be used only for the limited operation of vehicles in connection with the manufacture, construction ~~or~~, rebuilding, or delivery of new or used truck cabs or bodies between the manufacturer, dealer, seller, or purchaser, or with the foreclosure or repossession of vehicles, or with the pickup and delivery of motor vehicles to be prepared for sale by dealers, or, if the registrant is a public utility, for the limited movement of vehicles in connection with the sale of a replaced vehicle.
- (6) Suspension, Revocation or Refusal to Issue or to Renew a Registration. The Commissioner may deny the application of any person for registration under this section and may suspend or revoke a registration or refuse to issue a renewal thereof if he determines that such applicant or registrant has:
 - a. Made a material false statement in his application;
 - b. Used or permitted the use of number plates contrary to law;
 - c. Been guilty of fraud or fraudulent practices; or

- d. Failed to comply with any of the rules and regulations of the Commissioner for the enforcement of this section or with any provisions of this Chapter applicable thereto."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 30th day of June, 1987.

H.B. 322

CHAPTER 521

AN ACT TO PERMIT DISSOLUTION OF CERTAIN SANITARY DISTRICTS BY THE COUNTY BOARD OF COMMISSIONERS.

The General Assembly of North Carolina enacts:

Section 1. Chapter 130A of the General Statutes is amended by adding a new section to read:

" § 130A-85. *Further dissolution procedures.*--(a) The County Board of Commissioners may dissolve a Sanitary District located entirely within one county upon the following conditions:

- (1) There are 500 or less resident freeholders residing within the District;
- (2) The District has no outstanding bonded indebtedness;
- (3) The Board of Commissioners agrees to assume and pay any other outstanding legal indebtedness of the District;
- (4) The Board of Commissioners adopts a plan providing for continued operation and provision of all services previously being performed or rendered to the District. No plan shall be adopted unless at the time of its adoption any water and sewer or sanitary system being operated by the District is in compliance with all local, State, and federal rules and regulations; and
- (5) The Board of Commissioners adopts a resolution finding that the interest of the citizens of the Sanitary District and the county will be best served if the operation and the services provided by the District were provided for by the Board of Commissioners.

(b) Prior to taking action to dissolve a Sanitary District, the Board of Commissioners shall hold a public hearing concerning dissolution of the District. The County Board of Commissioners shall give notice of the hearing by publication of notice thereof in a newspaper or newspapers with general circulation in the county, once per week for three consecutive weeks. If, after the hearing, the Board of Commissioners deems it advisable to dissolve the District, they shall thereafter adopt the resolution and plan provided for herein.

During the period commencing with the first publication of notice of the public hearing as herein provided, and for a period of 60 days following the public hearing, the Board of Commissioners of the District may not enter into any contracts, incur any indebtedness or pledge, or encumber any of the District's assets except in the ordinary course of business.

(c) Upon adoption of the resolution provided for herein, all property, real, personal, and mixed, belonging to the District vests in and becomes the property of the county; all judgments, liens, rights of liens and causes of action in favor of the District vests in the county; and all rentals, taxes and assessments and other funds, charges or fees owed to the District may be collected by the county.

(d) Following dissolution of the District, the county may operate, maintain, and extend the services previously provided for by the District either:

- (1) as a part of county government; or
- (2) as a service district created on or after January 1, 1987, under Article 16 of Chapter 153A of the General Statutes to serve at least the area of the Sanitary District.

In lieu thereof, the services may be provided by any authority or district created after January 1, 1987, under this Article, or Articles 1, 4, 5 or 6 of Chapter 162A of the General Statutes to serve at least the area of the District. In such case, the county may convey the property, including all judgments, liens, rights of liens, causes of action, rentals, taxes and assessments mentioned in subsection (c) of this section, to that authority or District."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 30th day of June, 1987.

H.B. 857

CHAPTER 522

AN ACT TO PRESERVE CANCELED BONDS, NOTES, AND COUPONS FOR HISTORICAL AND EDUCATIONAL PURPOSES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 142-13 is amended by adding the following paragraph:

"Notwithstanding the foregoing, in lieu of destroying all canceled bonds, notes and interest coupons, the Treasurer is authorized, with the approval of the Council of State, to distribute the bonds, notes,

and coupons to the public schools of North Carolina and to the Department of Cultural Resources to be used for educational and historical purposes. The Department of Public Instruction and the Department of Cultural Resources may cooperate and assist in implementing such purposes."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 30th day of June, 1987.

H.B. 1098

CHAPTER 523

AN ACT TO CHANGE THE DATE FOR PAYMENT OF ASSESSMENTS AGAINST PRIMARY FOREST PRODUCTS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 113A-195(b) reads as rewritten:

"(b) The assessment shall be submitted on a quarterly basis of the State's fiscal year due and payable the twenty fifth last day of the month following the end of each quarter."

Sec. 2. This act shall become effective July 1, 1987, and applies to assessments levied on or after that date.

In the General Assembly read three times and ratified this the 30th day of June, 1987.

H.B. 1628

CHAPTER 524

AN ACT TO AUTHORIZE THE DIRECTOR OF THE BUDGET TO CONTINUE EXPENDITURES FOR THE OPERATION OF GOVERNMENT AT THE LEVEL IN EFFECT ON JUNE 30, 1987.

The General Assembly of North Carolina enacts:

----BUDGET CONTINUATION

Section 1. The Director of the Budget may continue to allocate funds for expenditure for current operations by State departments, institutions and agencies at a level not to exceed the level at which those operations were funded as of June 30, 1987. To the extent necessary to implement this authorization, funds currently available in the appropriate State funds and in cash balances, federal receipts, and departmental receipts shall be considered appropriated by the General Assembly. This authorization shall remain in effect until ratification of the current operations appropriations act for the 1987-89 biennium, at which time that act shall become effective and shall govern expenditures. Upon ratification of the current operations

appropriations act, the Director of the Budget shall adjust allocations to give effect to that act from July 1, 1987. Except as otherwise provided by this act, and except for provisions which clearly indicate an intention not to have an effect beyond the 1985-87 biennium, the textual provisions of Chapters 479, 480, 757, 778, 791, and 1014, Session Laws of 1985 in effect on June 30, 1987, shall continue to apply to funds allocated for expenditure under this section.

----DRIVER TRAINING FUNDING

Sec. 2. Notwithstanding G.S. 20-88.1(c), expenses incurred in carrying out the provisions of G.S. 20-88.1 from the beginning of the 1987-88 fiscal year until the ratification of the Current Operations Appropriations Act shall be paid out of the Highway Fund, provided that upon ratification of that act, the General Fund shall reimburse the Highway Fund for such expenditures.

----DELAY CHANGE IN THE LAW REGARDING THE COST ALLOCATION OF PLACEMENT OF EXCEPTIONAL CHILDREN

Sec. 3. Section 2 of Chapter 465, Session Laws of 1985, as amended by Section 76 of Chapter 1014, Session Laws of 1985 is amended by deleting "July 1, 1987", and substituting "August 1, 1987".

----EXTEND AUTHORITY FOR CHARLOTTE-MECKLENBURG PILOT TEACHER TENURE PROGRAM

Sec. 4. Section 6 of Chapter 394, Session Laws of 1983, as rewritten by Chapter 334, Session Laws of 1985, is amended by deleting "July 1, 1987" both places, and substituting "August 1, 1987".

----EXTEND MECKLENBURG PILOT MEDIATION PROGRAM

Sec. 5. Section 162(a) of Chapter 761, Session Laws of 1983, as amended by Section 18 of Chapter 698, Session Laws of 1985 is amended by deleting "June 30, 1987", and substituting "July 31, 1987".

----PERMIT DEVIATIONS FROM CERTAIN PROVISIONS OF THE EXECUTIVE BUDGET ACT

Sec. 6. The proviso to Section 161, Chapter 479, Session Laws of 1985, as amended by Section 2 of Chapter 851, Session Laws of 1985 and Section 175, Chapter 1014, Session Laws of 1985 continues to apply until July 31, 1987.

----CONTINUE USE OF FUNDS BY DIVISION OF MOTOR VEHICLES

Sec. 7. The provisions of Section 9 of Chapter 479, Session Laws of 1985 shall remain in effect until ratification of the Current Operations Appropriations Act for the 1987-89 biennium.

----HIGHWAY FUND/ALLOCATIONS BY TRANSPORTATION CONTROLLER

Sec. 8. The provisions of Section 5 of Chapter 479, Session Laws of 1985 shall remain in effect until ratification of the Current Operations Appropriations Act for the 1987-89 biennium.

Sec. 9. Funds appropriated in Chapter 1014 of the 1985 Session Laws (Regular Session, 1986) to the Office of State Budget and Management Reserve for Grant-in-Aid for the Constitutional Bicentennial Commission that are not expended or encumbered at the end of the 1986-87 fiscal year shall remain available for expenditure during the 1987-88 fiscal year.

---SCHOLARSHIP LOAN FUND FOR PROSPECTIVE TEACHERS

Sec. 10. Section 63(b) and Section 63(c) of Chapter 1014, Session Laws of 1985 is amended by deleting "July 1, 1987" whenever those words appear, and substituting "August 1, 1987".

Sec. 11. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 30th day of June, 1987.

S.B. 75

CHAPTER 525

AN ACT TO ALLOW ALL STATE AND LOCAL LAW ENFORCEMENT OFFICERS TO COMMUNICATE IN TIMES OF EMERGENCY.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-196 is amended at the end of the first paragraph by adding a new sentence to read:

"The Secretary of Crime Control and Public Safety, through the State Highway Patrol Division, is hereby authorized to establish a plan of operation in accordance with Federal Communication Commission rules so that all certified law enforcement officers within the State may use the law enforcement emergency frequency of 155.475MHz."

Sec. 2. This act shall become effective upon ratification.

In the General Assembly read three times and ratified this the 1st day of July, 1987.

S.B. 482

CHAPTER 526

AN ACT TO ELIMINATE THE REQUIREMENT THAT THE COUNTY BOARD OF ELECTIONS MUST APPROVE THE WITHDRAWAL OF ANY CANDIDATE IN A SINGLE COUNTY ELECTION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 163-114 reads as rewritten:

" § 163-114. *Filling vacancies among party nominees occurring after nomination and before election.*--If any person nominated as a candidate of a political party for one of the offices listed below (either in a primary or convention or by virtue of having no opposition in a primary) dies, resigns, or for any reason becomes ineligible or disqualified before the date of the ensuing general election, the vacancy shall be filled by appointment according to the following instructions:

| | |
|---|---|
| Position Any elective State office United States Senator | Vacancy is to be filled by appointment of State executive committee of political party in which vacancy occurs |
| A district office, including: Member of the United States House of Representatives Judge of superior court Judge of district court Solicitor State Senator in a multi-county senatorial district Member of State House of Representatives in a multi-county representative district | Appropriate district executive committee of political party in which vacancy occurs |
| State Senator in a single-county senatorial district Member of State House of Representatives in a single-county representative district Any elective county office | County executive committee of political party in which vacancy occurs, but if the vacancy arises from a cause other than death, the vacancy shall not be filled unless the board of elections in the county in which the vacancy occurs issues an order to that effect, provided, in the case of the State Senator or State Representative in a single-county district where |

not all the county is located in that district, then in voting, only those members of the county executive committee who reside within the district shall vote.

The party executive making a nomination in accordance with the provisions of this section shall certify the name of its nominee to the chairman of the board of elections, State or county, charged with the duty of printing the ballots on which the name is to appear. If at the time a nomination is made under this section the general election ballots have already been printed, the provisions of G.S. 163-139 shall apply. If any person nominated as a candidate of a political party vacates such nomination and such vacancy arises from a cause other than death and the vacancy in nomination occurs more than 120 days before the general election, the vacancy in nomination may be filled under this section only if the appropriate executive committee certifies the name of the nominee in accordance with this paragraph at least 90 days before the general election.

In a county not all of which is located in one congressional district, in choosing the congressional district executive committee member or members from that area of the county, only the county convention delegates or county executive committee members who reside within the area of the county which is within the congressional district may vote.

In a county which is partly in a multi-county senatorial district or which is partly in a multi-county House of Representatives district, in choosing that county's member or members of the senatorial district executive committee or House of Representatives district executive committee for the multi-county district, only the county convention delegates or county executive committee members who reside within the area of the county which is within that multi-county district may vote."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 1st day of July, 1987.

H.B. 354

CHAPTER 527

AN ACT TO PROHIBIT THE ABUSE OF PATIENTS OR RESIDENTS IN RESIDENTIAL HEALTH CARE FACILITIES.

The General Assembly of North Carolina enacts:

Section 1. Chapter 14 of the General Statutes is amended by adding the following new section:

"§ 14-32.2. *Patient abuse and neglect; punishments.*--(a) It shall be unlawful for any person to physically abuse a patient of a health care facility or a resident of a residential care facility, when the abuse is the result of an intentional or culpably negligent act or omission which causes serious bodily injury or death.

(b) Unless the conduct is prohibited by some other provision of law providing for greater punishment.

- (1) Any person who violates subsection (a) above is guilty of a Class C felony where intentional conduct proximately causes the death of the patient or resident;
- (2) Any person who violates subsection (a) above is guilty of a Class G felony where culpably negligent conduct proximately causes the death of the patient or resident;
- (3) Any person who violates subsection (a) above is guilty of a Class H felony where such conduct proximately causes serious bodily injury to the patient or resident..

(c) 'Health Care Facility' shall include hospitals, skilled nursing facilities, intermediate care facilities, intermediate care facilities for the mentally retarded, psychiatric facilities, rehabilitation facilities, kidney disease treatment centers, home health agencies, ambulatory surgical facilities, and any other health care related facility whether publicly or privately owned.

'Residential Care Facility' shall include homes for the aged and disabled, family care homes, group homes for developmentally disabled adults, adult foster care homes, and any other residential care related facility whether publicly or privately owned.

(d) 'Person' shall include any natural person, association, corporation, partnership, or other individual or entity.

(e) 'Culpably negligent' shall mean conduct of a willful gross and flagrant character, evincing reckless disregard of human life.

(f) Any defense which may arise under G.S. 90-321(h) or G.S. 90-322(d) pursuant to compliance with Article 23 of Chapter 90 shall be fully applicable to any prosecution initiated under this section.

(g) Criminal process for a violation of this section may be issued only upon the request of a District Attorney.

(h) The provisions of this section shall not supersede any other applicable statutory or common law offenses."

Sec. 2. This act shall become effective October 1, 1987, and shall apply to offenses committed on or after that date.

In the General Assembly read three times and ratified this the 1st day of July, 1987.

H. B. 844

CHAPTER 528

AN ACT TO MAKE CERTAIN CLARIFYING AND CONFORMING AMENDMENTS TO THE NORTH CAROLINA SELF-INSURANCE GUARANTY ACT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 97-130 is amended as follows:

(a) by renumbering existing subdivision (6) as subdivision (7);

(b) by adding a new subdivision (6) to read:

"(6) 'Member self-insurer' or 'member' means a self-insurer which is authorized by the Commissioner to self-insure pursuant to G.S. 97-93, 97-94 and 97-96.";

(c) by renumbering existing subdivision (7) as subdivision (8); and

(d) by deleting the phrase 'or member self-insurer' from new subdivision (8).

Sec. 2. G.S. 97-131 is amended as follows:

(a) G.S. 97-131(a) is amended by deleting the last sentence of the subsection;

(b) G.S. 97-131(b) is amended by inserting the phrase "by the Board" following "both," in the second sentence of the subsection;

(c) G.S. 97-131(b)(2) is rewritten to read:

"(2) A self-insurer shall be deemed to be a member of the Association for purposes of its own insolvency if it is a member when the compensable injury occurs."

Sec. 3. G.S. 97-132 is amended by rewriting the second sentence to read:

"The members of the Board shall be selected by the member self-insurers, subject to the approval of the Commissioner, and shall serve for terms which shall not exceed three years."

Sec. 4. G.S. 97-133(a)(1) is rewritten to read:

"(1) Obtain from each member self-insurer and file with the Commissioner individual reports specifying the aggregate benefits each member paid during the previous calendar year, and the annual standard premium that would have been paid by the individual member self-insurer during the previous calendar year, pursuant to manual rates established by the North Carolina Rate Bureau and using the experience rating procedure approved by the Commissioner for that member self-insurer or the annual premium collected by each group member self-insurer during the prior calendar year. These reports shall be due on or before July 15 following the close of that

calendar year, except that this deadline may be extended by the Commissioner for up to three additional months for good cause shown."

Sec. 5. G.S. 97-133(a)(2)d. is rewritten to read:

"d. If application of the contribution rates referenced in subdivisions a. and b. of this subdivision would produce an amount in excess of the one million dollar (\$1,000,000) limits of the fund, an equitable proration may be made; provided that every self-insurer that becomes a member of the Association shall pay an initial assessment, in an amount established by the Board, regardless of the size of the fund at the time the member joins the Association."

Sec. 6. G.S. 97-133(a)(3) is rewritten to read:

"(3) Administer a fund, to be known as the North Carolina Self-Insurance Guaranty Fund, which shall receive the assessments required in subdivision (2) of this subsection. Once the Fund reaches one million dollars (\$1,000,000), no further assessments shall be made except initial assessments of new member self-insurers that are required to be made in subdivision (2)d. of this subsection. Assessments may be subsequently made only to maintain the Fund at a level of one million dollars (\$1,000,000). In its discretion, the Board may determine that the assets of the Fund should be segregated, or, that a separate accounting shall be made, in order to identify that portion of the Fund which represents assessments paid by individual self-insurers and that portion of the Fund which represents assessments paid by group self-insurers. If the Board determines to segregate the Fund in this manner, the Association shall thereafter pay covered claims against individual member self-insurers from that portion of the Fund which represents assessments against individual self-insurers and shall thereafter pay covered claims against group member self-insurers from that portion of the Fund which represents assessments against group self-insurers. The cost of administration incurred by the Association shall be borne by the Fund and the Association is authorized to secure reinsurance and bonds and to otherwise invest the assets of the Fund to effectuate the purpose of the Association, subject to the approval of the Commissioner. All earnings from investment of Fund assets shall be placed in or credited to the Fund.

The Association may purchase primary excess insurance from an insurer licensed by the Commissioner for the appropriate lines of authority to defray its exposure to loss occasioned by the default of one or more of its members. The terms of any excess insurance so purchased shall be limited to providing coverage of liabilities which exceed the Fund's assets after the payment by member self-insurers of the maximum post-insolvency assessment provided in G.S. 197-

133(c)(1) herein and the Association shall fund any such purchase by levying a special assessment on its members for this purpose or by application of any unencumbered earnings of the Fund or any other available funds. The Association may obtain from each member any information the Association may reasonably require in order to facilitate the securing of this primary excess insurance. The Association shall establish reasonable safeguards designed to insure that information so received is used only for this purpose and is not otherwise disclosed;" .

Sec. 7. G.S. 97-133(a)(6)c. reads as rewritten:

"c. The cost of examinations under ~~subdivision (8) of this subsection~~ G.S. 97-137; and".

Sec. 8. G.S. 97-133(a)(8) is rewritten to read:

"(8) Notify such persons as the Commissioner directs under G.S. 97-136;" .

Sec. 9. G.S. 97-133(c) is rewritten by amending the introductory sentence to read as follows:

"(c) In the event that the assets of the Fund are not sufficient to pay the obligations of the Association, then the Association shall impose an additional assessment upon its members, which shall be known as a post-insolvency assessment which shall be imposed as follows:" .

Sec. 10. G.S. 97-133(c)(1) is rewritten to read:

"(1) Each individual member self-insurer shall be assessed in an amount not to exceed two percent (2%) each year of the annual standard premium that would have been paid by that member self-insurer during the prior calendar year. The assessments of each individual member self-insurer shall be in the proportion that the annual standard premium of the individual member self-insurer for the premium calendar year bears to the annual standard premium of all individual member self-insurers for the preceding calendar year. For group member self-insurers, the assessment shall not exceed two percent (2%) each year the annual premium collected by that group member self-insurer during the prior calendar year. The assessments of each group member self-insurer shall be in the proportion that the annual collected premium of the group member self-insurer for the premium calendar year bears to the annual collected premium of all group member self-insurers for the preceding calendar year."

Sec. 11. G.S. 97-134(1) is amended by rewriting the third sentence to read as follows:

"If the Association at any time fails to submit a Plan or suitable amendment to the Plan the Commissioner shall, after notice and hearing, adopt such reasonable rules as are necessary or advisable to

effectuate this Article."

Sec. 12. G.S. 97-135 is amended to read as follows:

"§ 97-135. *Insolvency.*--A member self-insurer shall be insolvent for the purposes of this Article under the following circumstances:

(1) Determination of insolvency by a court of competent jurisdiction; or

(2) Institution of bankruptcy proceedings by or regarding the member self-insurer; or

(3) The Board determines that the self-insurer's total liabilities exceed its total assets or the self-insurer is unable or ceases to pay its debts as they fall due or in the ordinary course of business."

Sec. 13. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 1st day of July, 1987.

H.B. 938

CHAPTER 529

AN ACT REGARDING UNINSURED MOTORIST COVERAGE CLAIMS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-279.21(b)(3)a. reads as rewritten:

"a. A provision that the insurer shall be bound by a final judgment taken by the insured against an uninsured motorist if the insurer has been served with copy of summons, complaint or other process in the action against the uninsured motorist by registered or certified mail, return receipt requested, or in any manner provided by law; provided however, that the determination of whether a motorist is uninsured may be decided only by an action against the insurer alone. The insurer, upon being served as herein provided, shall be a party to the action between the insured and the uninsured motorist though not named in the caption of the pleadings and may defend the suit in the name of the uninsured motorist or in its own name. The insurer, upon being served with copy of summons, complaint or other pleading, shall have the time allowed by statute in which to answer, demur or otherwise plead (whether such pleading is verified or not) to the summons, complaint or other process served upon it. The consent of the insurer shall not be required for the initiation of suit by the insured against the uninsured motorist: Provided, however, no action shall be initiated by the insured until 60 days following the posting of notice to the insurer at the address shown on the policy or after

personal delivery of such notice to the insurer or its agent setting forth the belief of the insured that the prospective defendant or defendants are uninsured motorists. No default judgment shall be entered when the insurer has timely filed an answer or other pleading as required by law. The failure to post notice to the insurer 60 days in advance of the initiation of suit shall not be grounds for dismissal of the action, but shall automatically extend the time for the filing of an answer or other pleadings to 60 days after the time of service of the summons, complaint, or other process on the insurer."

Sec. 2. This act shall become effective October 1, 1987.

In the General Assembly read three times and ratified this the 1st day of July, 1987.

H.B. 1126

CHAPTER 530

AN ACT TO AMEND CHAPTER 42 TO CLARIFY THE CHARGING OF LATE FEES IN A RESIDENTIAL RENTAL AGREEMENT.

The General Assembly of North Carolina enacts:

Section 1. Chapter 42 of the General Statutes is amended by adding a new section to read:

"§ 42-45. *Late fees.*--(a) In all residential rental agreements in which a definite time for the payment of the rent is fixed, the parties may agree to a late fee not to exceed fifteen dollars (\$15.00) or five percent (5%) of the rental payment, whichever is greater, to be charged by the lessor if any rental payment is five days or more late.

(b) A late fee under this section may be imposed only one time for each late rental payment. A late fee for a specific late rental payment may not be deducted from a subsequent rental payment so as to cause the subsequent rental payment to be in default.

(c) Any provision of a residential rental agreement contrary to the provisions of this section is against the public policy of this State and therefore void and unenforceable."

Sec. 2. This act is effective upon ratification and shall apply only to leases entered into on or after that date.

In the General Assembly read three times and ratified this the 1st day of July, 1987.

AN ACT TO ADOPT TECHNICAL AMENDMENTS TO THE
REVISED UNIFORM LIMITED PARTNERSHIP ACT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 59-103(d) reads as rewritten:

~~"(d) The limited partnership name shall not be the same as, or deceptively similar to, the name of any domestic corporation or limited partnership or of any foreign corporation or limited partnership authorized to transact business in this State, or a name the exclusive right to which is, at the time, reserved or registered by some other person in the manner prescribed by G.S. 59-104 be sufficiently unique to permit separate indexing in the limited partnership records in the Office of the Secretary of State. Filing of name does not confer any right to the use of the name in commerce."~~

Sec. 2. G.S. 59-105 reads as rewritten:

"§ 59-105. *Registered office and registered agent.*--(a) Each limited partnership shall have and continuously maintain in this State:

- (1) A registered office, which may be, but need not be, its place of business;
- (2) A registered agent, which agent may be either an individual resident of this State whose business office is identical with such registered office, or, a domestic corporation, or a foreign corporation authorized to transact business in this State, having a business office identical with such registered office.

(b) Limited partnerships formed prior to October 1, 1986, shall file a certificate of limited partnership with the Office of the Secretary of State pursuant to G.S. 59-201(a) designating the address of the registered office of the limited partnership and the identity of the registered agent at such address.

(c) Whenever a limited partnership shall fail to appoint or maintain a registered agent in this State, or whenever its registered agent cannot with due diligence be found at the registered office, then the Secretary of State shall be an agent of such limited partnership upon whom any such process, notice, or demand may be served. Service on the Secretary of State of any such process, notice, or demand shall be made by delivering to and leaving with him, or with any clerk having charge of the limited partnership department of his office, duplicate copies of such process, notice or demand. In the event any such process, notice or demand is served on the Secretary of State, he shall

immediately cause one of the copies thereof to be forwarded by registered or certified mail, addressed to the limited partnership at its registered office. Any such limited partnership so served shall be in court for all purposes from and after the date of such service on the Secretary of State.

(d) The Secretary of State shall keep a record of all processes, notices and demands served upon him under this section, and shall record therein the time of such service and his action with reference thereto.

(e) Nothing herein contained shall limit or affect the right to serve any process, notice or demand required or permitted by law to be served upon a limited partnership in any other manner now or hereafter permitted by law."

Sec. 3. G.S. 59-201 is amended by adding a new subsection to read:

"(c) Domestic limited partnership filings filed prior to October 1, 1986, with the Office of Register of Deeds pursuant to G.S. 59-2(a)(2) shall evidence the existence of limited partnerships formed prior to October 1, 1986, and shall be public notice of only those matters contained in G.S. 59-201(a) and shall be used for no other purpose."

Sec. 4. G.S. 59-202(d) is repealed.

Sec. 5. G.S. 59-206(a)(2) reads as rewritten:

"(2) The original document so signed, together with the conformed copy, shall be delivered to the Secretary of State. Unless he finds that it does not conform to law, the Secretary of State shall, when the proper ~~taxes and~~ fees have been tendered, endorse upon the original the word 'filed' and the hour, day, month and year of the filing thereof and shall file the same in his office. The Secretary of State shall thereupon immediately compare the copy with the original and if he finds that they are identical he shall make upon the conformed copy the same endorsement which appears on the original and shall attach to the copy a certificate stating that attached thereto is a true copy of the document, designated by an appropriate title, filed in his office and showing the date of such filing. He shall thereupon return the copy so certified to the limited partnership or its representatives."

Sec. 6. G.S. 59-403 reads as rewritten:

"§ 59-403. *General powers and liabilities.*--(a) Except as provided in this Article or in the partnership agreement, a general partner of a limited partnership has the rights and powers and is subject to the restrictions and liabilities of a partner in a partnership without limited partners.

(b) Except as provided in this Article, a general partner of a limited partnership has the liabilities of a partner in a partnership without limited partners to persons other than the partnership and the other partners. Except as provided in this Article or in the partnership agreement, a general partner of a limited partnership has the liabilities of a partner in a partnership without limited partners to the partnership and to the other partners."

Sec. 7. G.S. 59-702 reads as rewritten:

"§ 59-702. *Assignment of partnership interest.*--Except as provided in the partnership agreement, a partnership interest is assignable in whole or in part. Subject to G.S. 59-801(3) an ~~An~~ assignment of a partnership interest does not dissolve a limited partnership or entitle the assignee to become or to exercise any rights of a partner. An assignment entitles the assignee to receive, to the extent assigned, only the allocation and distribution to which the assignor would be entitled. Except as provided in the partnership agreement, a limited partner shall continue to be a limited partner after assignment of all or any part of his partnership interest. Except as provided in the partnership agreement, a general partner ceases to be a general partner upon assignment of all his partnership interest."

Sec. 8. G.S. 59-903(a) reads as rewritten:

"§ 59-903. *Issuance of registration.*--(a) If the Secretary of State finds that an application conforms to law he shall, when all requisite ~~taxes and~~ fees have been tendered as in this Article prescribed:

- (1) Endorse on the application the word 'filed', and the hour, day, month and year of the filing thereof;
- (2) File in his office the application;
- (3) Issue a certificate of authority to transact business in this State to which he shall affix the conformed copy of the application; and
- (4) Send to the foreign limited partnership or its representative the certificate of authority, together with the conformed copy of the application affixed thereto."

Sec. 8.1. G.S. 59-902 is amended by adding three new subsections to read:

"(c) Whenever a foreign limited partnership shall fail to appoint or maintain a registered agent in this State, or whenever its registered agent cannot with due diligence be found at the registered office, then the Secretary of State shall be an agent of such foreign limited partnership upon whom any such process, notice, or demand may be served. Service on the Secretary of State of any such process, notice,

or demand shall be made by delivering to and leaving with him, or with any clerk having charge of the limited partnership department of his office, duplicate copies of such process, notice or demand. In the event any such process, notice or demand is served on the Secretary of State, he shall immediately cause one of the copies thereof to be forwarded by registered or certified mail, addressed to the foreign limited partnership at its registered office. Any such foreign limited partnership so served shall be in court for all purposes from and after the date of such service on the Secretary of State.

(d) The Secretary of State shall keep a record of all processes, notices and demands served upon him under this section, and shall record therein the time of such service and his action with reference thereto.

(e) Nothing herein contained shall limit or affect the right to serve any process notice or demand required or permitted by law to be served upon a foreign limited partnership in any other manner now or hereafter permitted by law."

Sec. 9. G.S. 59-1104(a)(2) reads as rewritten:

"(2) G.S. 59-704 applies only to admissions assignments made after the effective date;"

Sec. 10. G.S. 59-1104(a)(5) reads as rewritten:

"(5) The repeal of any prior statutory provision by this Article shall not impair, or otherwise affect, the organization or continued existence of a limited partnership existing at the effective date of this Article, nor shall the repeal by this Article of any such prior provision be construed so as to impair any contract or to affect any right accrued prior to the effective date of this Article; but such limited partnerships shall be subject to the procedural and other requirements of this Article except as otherwise specified in G.S. 59-1104(a). Provided, that failure to comply with the requirements of this Article by such limited partnerships shall not cause loss of limited liability."

Sec. 11. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 1st day of July, 1987.

H.B. 1176

CHAPTER 532

AN ACT TO AMEND THE EMPLOYMENT SECURITY LAW.

The General Assembly of North Carolina enacts:

Section 1. Chapter 96 of the General Statutes is amended by adding a new section to read:

" § 96-15.1. *Protection of witnesses from discharge, demotion, or intimidation.*--(a) No person may discharge, demote, or threaten any person because that person has testified or has been summoned to testify in any proceeding under the Employment Security Act.

(b) Any person who violates the provisions of this section shall be liable in a civil action for reasonable damages suffered by any person as a result of the violation, and an employee discharged or demoted in violation of this section shall be entitled to be reinstated to his former position. The burden of proof shall be upon the party claiming a violation to prove a claim under this section.

(c) The General Court of Justice shall have jurisdiction over actions under this section.

(d) The statute of limitations for actions under this section shall be one year pursuant to G.S. 1-54."

Sec. 2. Chapter 96 of the General Statutes is amended by adding a new Section 96-15.2 to read:

" § 96-15.2. *Protection of witness before the Employment Security Commission.*--If any person shall by threats, menace, or in any other manner intimidate or attempt to intimidate any person who is summoned or acting as a witness in any proceeding brought under the Employment Security Act, or prevent or deter, or attempt to prevent or deter any person summoned or acting as such witness from attendance upon such proceeding, he shall be guilty of a misdemeanor, and upon conviction shall be fined or imprisoned in the discretion of the court."

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 1st day of July, 1987.

H.B. 306

CHAPTER 533

AN ACT TO PROVIDE FOR THE PURCHASE OF WITHDRAWN SERVICE UNDER THE TEACHERS' AND STATE EMPLOYEES' RETIREMENT SYSTEM AND THE LOCAL GOVERNMENTAL EMPLOYEES' RETIREMENT SYSTEM AFTER THE COMPLETION OF FIVE YEARS OF CREDITABLE SERVICE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 135-4 is amended by adding a new subdivision (x) to the end to read:

"(x) Notwithstanding any other provision of this Chapter, any person who withdrew his contribution in accordance with the provisions of G.S. 128-27(f), or G.S. 135-5(f) or the rules and regulations of the Law Enforcement Officer's Retirement System, and who subsequently returns to service, may, upon completion of five years of membership service, purchase the withdrawn service by making a lump sum amount to the Annuity Savings Fund equal to the full liability of the service credits calculated on the basis of the assumptions used for purposes of the actuarial valuation of the system's liabilities; and the calculation of the amount payable shall take into account the retirement allowance arising on account of the additional service credit commencing at the earliest age at which the member could retire on an unreduced retirement allowance, as determined by the Board of Trustees upon the advice of the consulting actuary, plus an administrative fee to be set by the Board of Trustees."

Sec. 2. G.S. 128-26 is amended by adding a new subdivision (n) to the end to read:

"(n) Notwithstanding any other provision of this Chapter, any person who withdrew his contribution in accordance with the provisions of G.S. 128-27(f), or G.S. 135-5(f) or the rules and regulations of the Law Enforcement Officer's Retirement System and who subsequently returns to service, may, upon completion of five years of membership service, purchase the withdrawn service by making a lump sum amount to the Annuity Savings Fund equal to the full liability of the service credits calculated on the basis of the assumptions used for purposes of the actuarial valuation of the system's liabilities; and the calculation of the amount payable shall take into account the retirement allowance arising on account of the additional service credit commencing at the earliest age at which the member could retire on an unreduced retirement allowance, as determined by the Board of Trustees upon the advice of the consulting actuary, plus an administrative fee to be set by the Board of Trustees."

Sec. 3. This act shall become effective July 1, 1987.

In the General Assembly read three times and ratified this the 2nd day of July, 1987.

H.B. 333

CHAPTER 534

AN ACT TO PROVIDE AN ADDITIONAL PROCEDURES FOR MERGER OF SCHOOL ADMINISTRATIVE UNITS.

The General Assembly of North Carolina enacts:

Section 1. Chapter 115C of the General Statutes is amended by adding a new section to read:

"§ 115C-68.1. *Merger of units in adjoining counties.*--(a) Boards of education of two contiguous counties, and all the city school administrative units located in those counties (at least one of which must be located in more than one county) may develop a plan for merger for the purpose of merging concurrently or in stages all or any combination or portion of the school administrative units in whole or in part in those counties into one or more administrative units upon approval by the State Board of Education of a written plan for merger submitted by a majority of the boards of education involved and bearing the approval of a majority of the tax-levying bodies for the school units. The plan shall be consistent with the General Statutes, shall contain provisions covering those items listed in G.S. 115C-67 and shall contain any other provision deemed necessary or appropriate by the local boards of education for the merger of school units in two or more counties. Any plan approved by a majority of the school administrative units and tax levying bodies, must prescribe the status of each of the school units in those counties.

In the event that the vote of the local boards of education on the approval of the plan is not unanimous, then the local board of education casting the dissenting vote, with the approval of its tax-levying body, may submit to the State Board of Education for approval an alternative written plan for the merger of a city school administrative unit, located in two counties, into each of the counties in which the city lies, but may not submit any other alternative.

The State Board of Education shall cooperate with the tax-levying bodies and the local Boards of Education. The State Board of Education shall not disapprove any plan on the basis that the plan may result in the merger of a city school administrative unit, located in two counties, into each of the counties in which the city lies, or on the basis that all systems in both counties may be merged into one system or on the basis that the plan represents any geographic combination or division of any existing city or county school administrative unit or units. Upon approval of an alternative plan by the State Board of Education, both plans must be placed on the ballot in the referendum as provided for in subsection (c).

(b) To be effective under this section, the plan or plans shall state that it is adopted under G.S. 115C-68.1.

(c) The plan for merger, including any arrangements for financing or taxing for the schools in the new local school administrative unit or units, shall be submitted for the approval of the majority of the voters of the two counties in a combined two-county referendum or election called for the purpose of approving these matters. Such elections or referendums shall be held under the provisions governing elections or referendums as set forth in G.S. 115C-507 and Chapter 163 of the General Statutes to the extent applicable. Each board of county commissioners shall have authority to have such election or referendum conducted by the board of elections of its county under the provisions set forth in G.S. 115C-507 and Chapter 163 of the General Statutes to the extent applicable, except that if two plans are placed on the ballot, then the board of elections shall provide a ballot which shall be prepared under the provisions as set forth in G.S. 163-140(b)(7) and which shall allow the voter to vote for only one of the plans, and the plan receiving the higher vote shall be approved."

Sec. 2. This act applies only to the Counties of Edgecombe and Nash, the Town of Tarboro and the City of Rocky Mount, and to the County School Administrative Units of Edgecombe and Nash, and to the City School Administrative Units of Rocky Mount and Tarboro.

Sec. 3. The plan or plans of merger provided in G.S. 115C-68.1 pursuant to this act shall be completed and submitted to the State Board of Education by the applicable boards and authorities set forth in Section 2 of this act no later than July 1, 1988, and the plan or plans for merger shall be prepared and approved by the State Board of Education and the applicable boards and authorities referred to in Section 2 of this act expeditiously and the referendum shall be held simultaneously in each county in conjunction with the general election in 1988. The State Board of Elections and the county boards of elections shall take the necessary action to implement the referendum referred to herein.

Sec. 4. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 2nd day of July, 1987.

H.B. 645

CHAPTER 535

AN ACT TO DEFINE A "SUBDIVISION" FOR THE PURPOSE OF SUBDIVISION REGULATIONS IN ROBESON COUNTY.

The General Assembly of North Carolina enacts:

Section 1. For purposes of Part 2 of Article 18 of Chapter 153A of the General Statutes. "subdivision" means all divisions of a tract or parcel of land into two or more lots, building sites, or other

divisions, for the purpose, whether immediate or future of sale or building development and shall include all divisions of land involving the dedication of a new street or a change in existing street; provided, however, that the following shall not be included within this definition nor be subject to the regulations authorized by Part 2, Article 18 of Chapter 153A of the General Statutes:

(1) The combination or recombination of portions of previously recorded lots where the total number of lots is not increased and the resultant lots are equal to or exceed the standards of the county as shown in its subdivision regulations;

(2) The public acquisition by purchase of strips of land for the widening or opening of streets;

(3) The conveyance of a lot or tract to a grantee who would have been an heir of the grantor if the grantor had died intestate immediately prior to the conveyance, provided that grantor has not previously conveyed a lot or tract of land to the grantee from the same tract or parcel of land, unless the conveyance results in a combination or a recombination as provided for above in number one;

(4) The conveyance of a lot or tract for the purpose of dividing lands among the tenants in common, all of whom inherited by intestacy or by will, the land from a common ancestor;

(5) The division of land into parcels of five acres or more where the grantor records a road right-of-way agreement prior to or simultaneously with the recording of the deed, which said agreement provides for access to the parcel by a right-of-way of at least 30 feet in width and contains an agreement for construction and maintenance of the road;

(6) The division of land pursuant to an Order of the General Court of Justice;

(7) The division of land for cemetery lots or burial plots;

(8) The conveyance of a tract or parcel of land of at least 20,000 square feet exclusive of State right-of-way for road with at least 100 feet frontage upon a State-maintained road;

(9) The conveyance of a tract or parcel of land when compliance with Subdivision Ordinance would cause a serious financial hardship on grantor in accordance with standards and procedures to be set out in Subdivision Ordinance proposed to be adopted pursuant to Part 2 of Article 18 of Chapter 153A of the General Statutes.

Sec. 2. G.S. 153A-335 shall not be applicable in Robeson County.

Sec. 3. This act shall apply only to Robeson County.

Sec. 4. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 2nd day of July, 1987.

H.B. 1244

CHAPTER 536

AN ACT TO CLARIFY THE AUTHORITY OF THE
DEPARTMENT OF HUMAN RESOURCES OVER THE CAMP
BUTNER RESERVATION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 150B-1(d) is amended by inserting a new paragraph between the second and third paragraphs of that subsection to read:

"The Department of Human Resources is exempt from this Chapter in exercising its authority over the Camp Butner reservation granted in Article 6 of Chapter 122C of the General Statutes."

Sec. 2. G.S. 122C-403 is rewritten to read:

"§ 122C-403. *Secretary's authority over Camp Butner reservation.*-- The Secretary shall administer the Camp Butner reservation. In performing this duty, the Secretary has the powers listed below. In exercising these powers the Secretary has the same authority and is subject to the same restrictions that the governing body of a city would have and would be subject to if the reservation was a city, unless this section provides to the contrary. The Secretary may:

(1) Regulate airports on the reservation in accordance with the powers granted in Article 4 of Chapter 63 of the General Statutes.

(2) Take actions in accordance with the general police power granted in Article 8 of Chapter 160A of the General Statutes.

(3) Regulate the development of the reservation in accordance with the powers granted in Article 19, Parts 2, 3, 3A, 3B, 5, 6, and 7, of Chapter 160A of the General Statutes. The Secretary may not, however, grant a special use permit, a conditional use permit, or a special exception under Part 3 of that Article. In addition, the Secretary is not required to notify landowners of zoning classification actions under G.S. 160A-384, and the protest petition requirements in G.S. 160A-385, and 160A-386 do not apply.

(4) Establish one or more planning agencies in accordance with the power granted in G.S. 160A-361 or designate the Community of Butner Planning Commission as the planning agency for the reservation.

(5) Regulate streets, traffic, and parking on the reservation in accordance with the powers granted in Article 15 of Chapter 160A of the General Statutes.

(6) Control erosion and sedimentation on the reservation in accordance with the powers granted in G.S. 160A-458 and Article 4 of Chapter 113A of the General Statutes.

(7) Contract with and undertake agreements with units of local government in accordance with the powers granted in G.S. 160A-413 and Article 20, Part 1, of Chapter 160A of the General Statutes.

(8) Regulate floodways on the reservation in accordance with the powers granted in G.S. 160A-458.1 and Article 21, Part 6, of Chapter 143 of the General Statutes.

(9) Assign duties given by the statutes listed in the preceding subdivisions to a local official to the Chief of Support Services of John Umstead Hospital or another appropriate person.

(10) Adopt rules to carry out the purposes of this Article.

Sec. 3. G.S. 122C-404(i) is amended by adding a new sentence to read:

"If the Secretary is authorized by statute to create a board or other group, some of whose members are required to have special qualifications, the Secretary may assign the duties of the board or other group to the Community of Butner Planning Commission if the members of the Planning Commission have the requisite qualifications."

Sec. 4. G.S. 122C-405 is rewritten to read:

"§ G.S. 122C-405. *Procedure applicable to rules.*--Rules adopted by the Secretary under this Article shall be adopted in accordance with the procedures for adopting a city ordinance on the same subject, shall be subject to review in the manner provided for a city ordinance adopted on the same subject, and shall be enforceable in accordance with the procedures for enforcing a city ordinance on the same subject. Violation of a rule adopted under this Article is punishable as provided in G.S. 122C-406.

Rules adopted under this Article may apply to part or all of the Camp Butner reservation. If a public hearing is required before the adoption of a rule, the Community of Butner Planning Commission shall conduct the hearing."

Sec. 5. Part 1 of Article 6 of Chapter 122C of the General Statutes is amended by adding a new section to read:

"§ 122C-410. *Authority of county or city over Camp Butner reservation.*--(a) A municipality may not annex territory extending into or extend its extraterritorial jurisdiction into the Camp Butner reservation without written approval from the Secretary of each proposed annexation or extension. The procedures, if any, for withdrawing approval granted by the Secretary to an annexation or extension of extraterritorial jurisdiction shall be stated in the notice of approval.

(b) A county ordinance may apply in part or all of the Camp Butner reservation if the Secretary gives written approval of the ordinance. The Secretary may withdraw his approval of a county ordinance by giving written notification, by certified mail, return receipt requested, to the county. A county ordinance ceases to be effective in the Camp Butner reservation 30 days after the county receives the written notice of the withdrawal of approval."

Sec. 6. This act is effective upon ratification. A county ordinance that applies to the Camp Butner reservation on the effective date of this act shall continue to apply until the Secretary of the Department of Human Resources withdraws his approval of the ordinance or the county amends or repeals the ordinance so that it no longer applies to the Camp Butner reservation.

In the General Assembly read three times and ratified this the 2nd day of July, 1987.

H.B. 537

CHAPTER 537

AN ACT TO REQUIRE TAX INFORMATION ON DEEDS BEFORE THEY MAY BE RECORDED IN MITCHELL COUNTY.

The General Assembly of North Carolina enacts:

Section 1. Chapter 47 of the General Statutes is amended by adding a new section to read:

" § 47-17.2. *Deeds registered or ordered to be registered to bear tax information.*--The register of deeds of any county in North Carolina may not accept for registration, nor may any judge order registration pursuant to G.S. 47-14, of any deed, unless the first page of the deed bears the stamps of the county tax supervisor and tax collector indicating that all taxes have been paid and bears a notation from the tax supervisor or tax collector indicating who is responsible for the tax on the property for the current year."

Sec. 2. This act applies to Mitchell County only.

Sec. 3. This act shall become effective July 1, 1987, and applies to deeds registered on or after that date.

In the General Assembly read three times and ratified this the 3rd day of July, 1987.

AN ACT TO AUTHORIZE LEE COUNTY TO LEVY A ROOM OCCUPANCY TAX.

The General Assembly of North Carolina enacts:

Section 1. Occupancy tax. (a) Authorization and scope. The Lee County Board of Commissioners may by resolution, after not less than 10 days' public notice and after a public hearing held pursuant thereto, levy a room occupancy tax of up to three percent (3%) of the gross receipts derived from the rental of any room, lodging, or similar accommodation furnished by a hotel, motel, inn, or similar place within the county that is subject to sales tax imposed by the State under G.S. 105-164.4(3). This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations and to any rental unit rented to the same person for seven or more consecutive days.

(b) Collection. Every operator of a business subject to the tax levied under this section shall, on and after the effective date of the levy of the tax, collect the tax. This tax shall be collected as part of the charge for furnishing a taxable accommodation. The tax shall be stated and charged separately from the sales records, and shall be paid by the purchaser to the operator of the business as trustee for and on account of the county. The tax shall be added to the sales price and shall be passed on to the purchaser instead of being borne by the operator of the business. The county shall design, print, and furnish to all appropriate businesses and persons in the county the necessary forms for filing returns and instructions to ensure the full collection of the tax. An operator of a business who collects the occupancy tax levied under this section may deduct from the amount remitted to the county a discount of three percent (3%) of the amount collected.

(c) Administration. The county shall administer a tax levied under this section. A tax levied under this section is due and payable to the county finance officer in monthly installments on or before the 15th day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the 15th day of each month, prepare and render a return on a form prescribed by the county. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied.

A return filed with the county finance officer under this section is not a public record as defined by G.S. 132-1 and may not be disclosed except as required by law.

(d) Penalties. A person, firm, corporation, or association who fails or refuses to file the return required by this section shall pay a penalty of ten dollars (\$10.00) for each day's omission. In case of failure or refusal to file the return or pay the tax for a period of 30 days after the time required for filing the return or for paying the tax, there shall be an additional tax, as a penalty, of five percent (5%) of the tax due in addition to any other penalty, with an additional tax of five percent (5%) for each additional month or fraction thereof until the tax is paid.

Any person who willfully attempts in any manner to evade a tax imposed under this section or who willfully fails to pay the tax or make and file a return shall, in addition to all other penalties provided by law, be guilty of a misdemeanor and shall be punishable by a fine not to exceed one thousand dollars (\$1,000), imprisonment not to exceed six months, or both. The board of commissioners may, for good cause shown, compromise or forgive the penalties imposed by this subsection.

(e) Use of tax revenue. Lee County shall place the proceeds of a tax levied under this section in a capital reserve fund in accordance with Part 2 of Article 3 of Chapter 159 of the General Statutes. The proceeds shall be held in the capital reserve fund until a sufficient amount has accumulated to construct a Community Resource Center for Lee County. The proceeds shall then be used to construct the Community Resource Center. After the Center is completed, Lee County shall spend the proceeds of the tax for maintenance of the Community Resource Center. Any excess over the amount needed for maintenance of the Center may be used by Lee County for any lawful purpose.

(f) Effective date of levy. A tax levied under this section shall become effective on the date specified in the resolution levying the tax. That date must be the first day of a calendar month, however, and may not be earlier than the first day of the second month after the date the resolution is adopted.

(g) Repeal. A tax levied under this section may be repealed by a resolution adopted by the Lee County Board of Commissioners. Repeal of a tax levied under this section shall become effective on the first day of a month and may not become effective until the end of the fiscal year in which the repeal resolution was adopted. Repeal of a tax levied under this section does not affect a liability for a tax that was attached before the effective date of the repeal, nor does it affect a right to a refund of a tax that accrued before the effective date of the

repeal.

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 3rd day of July, 1987.

H.B. 763

CHAPTER 539

AN ACT TO PERMIT THE TEACHERS' RETIREMENT SYSTEM AND THE LOCAL GOVERNMENTAL EMPLOYEES' RETIREMENT SYSTEM TO OBTAIN THE ADDRESSES OF MEMBERS, BENEFICIARIES AND BENEFICIARIES OF DECEASED MEMBERS FROM OTHER STATE AGENCIES, DEPARTMENTS AND INSTITUTIONS IN ORDER TO NOTIFY THEM OF BENEFIT ENTITLEMENTS.

The General Assembly of North Carolina enacts:

Section 1. G. S. 128-28 and 135-6 are amended by adding new subsections designated as (q) and (p), respectively, to read:

"(p) Notwithstanding any law, rule, regulation or policy to the contrary, any board, agency, department, institution or subdivision of the State maintaining lists of names and addresses in the administration of their programs may upon request provide to the Retirement System information limited to social security numbers, current name and addresses of persons identified by the System as members, beneficiaries, and beneficiaries of members of the System. The System shall use such information for the sole purpose of notifying members, beneficiaries, and beneficiaries of members of their rights to and accruals of benefits in the Retirement System. Any social security number, current name and address so obtained and any information concluded therefrom and the source thereof shall be treated as confidential and shall not be divulged by any employee of the Retirement System or of the Department of State Treasurer except as may be necessary to notify the member, beneficiary, or beneficiary of the member of their rights to and accruals of benefits in the Retirement System. Any person, officer, employee or former employee violating this provision shall be guilty of a misdemeanor and fined not less than two hundred dollars (\$200.00) nor more than one thousand (\$1,000) and/or be imprisoned; and if such offending person be a public official or employee, he shall be dismissed from office or employment and shall not hold any public office or employment in this State for a period of five years thereafter."

Sec. 2. This act shall become effective upon ratification.

In the General Assembly read three times and ratified this the 3rd day of July, 1987.

H.B. 1102

CHAPTER 540

AN ACT REGARDING THE CONTENTS OF TEACHERS' PERSONNEL FILES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 115C-325(b) reads as rewritten:

"(b) Personnel Files. The superintendent shall maintain in his office a personnel file for each teacher that contains any complaint, commendation, or suggestion for correction or improvement about the ~~teacher.~~ teacher's professional conduct. The complaint, commendation, or suggestion shall be signed by the person who makes it and shall be placed in the teacher's file only after five days' notice to the teacher. Any denial or explanation relating to such complaint, commendation, or suggestion that the teacher desires to make shall be placed in the file. Any teacher may petition the local board of education to remove any information from his personnel file that he deems invalid, irrelevant, or outdated. The board may order the superintendent to remove said information if it finds the information is invalid, irrelevant, or outdated.

The personnel file shall be open for the teacher's inspection at all reasonable times but shall be open to other persons only in accordance with such rules and regulations as the board adopts. Any preemployment data or other information obtained about a teacher before his employment by the board may be kept in a file separate from his personnel file and need not be made available to him. No data placed in the preemployment file may be introduced as evidence at a hearing on the dismissal or demotion of a teacher."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 3rd day of July, 1987.

AN ACT TO PROVIDE THAT CONSENT FOR THE ADOPTION OF A CHILD IS INEFFECTIVE UNDER CERTAIN CIRCUMSTANCES AND TO CLARIFY THAT NO CONSENT IS REVOCABLE AFTER AN INTERLOCUTORY DECREE HAS BEEN ISSUED.

The General Assembly of North Carolina enacts:

Section 1. G.S. 48-11(a) is rewritten to read:

"(a) No consent described in G.S. 48-6, 48-7, or 48-9 may be revoked by the consenting party:

- (1) After the entering of an interlocutory decree.
- (2) After the entering of a final order of adoption when the entering of an interlocutory decree has been waived in accordance with the provisions of G.S. 48-21.
- (3) After three months from the date of the giving of the consent.
- (4) After 30 days from the date of the giving of the consent, when the consent has been given generally to a director of social services or to a duly licensed non-profit child-placing agency.

When the consent of any person or agency is required under the provisions of this Chapter, the filing of such consent with the petition shall be sufficient to make the consenting person or agency a party of record to the proceeding; and no service of any process need be made upon such person or agency."

Sec. 2. G.S. 50-13.2 is amended by adding a new subsection at the end to read:

"(d) If, within a reasonable time, one parent fails to consent to adoption pursuant to Chapter 48 of the General Statutes or parental rights have not been terminated, the consent of the other consenting parent shall not be effective in an action for custody of the child."

Sec. 3. This act shall become effective October 1, 1987.

In the General Assembly read three times and ratified this the 3rd day of July, 1987.

AN ACT TO AUTHORIZE A MAGISTRATE TO ORDER REMOVAL FROM A DWELLING FOUND UNFIT FOR HUMAN HABITATION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 160A-443 is further amended by adding a new subdivision to read:

"(7) If any occupant fails to comply with an order to vacate a dwelling, the public officer may file a civil action in the name of the city to remove such occupant. The action to vacate the dwelling shall be in the nature of summary ejectment and shall be commenced by filing a complaint naming as parties-defendant any person occupying such dwelling. The clerk of superior court shall issue a summons requiring the defendant to appear before a magistrate at a certain time, date and place not to exceed 10 days from the issuance of the summons to answer the complaint. The summons and complaint shall be served as provided in G.S. 42-29. The summons shall be returned according to its tenor, and if on its return it appears to have been duly served, and if at the hearing the public officer produces a certified copy of an ordinance adopted by the governing body pursuant to subdivision (5) authorizing the officer to proceed to vacate the occupied dwelling, the magistrate shall enter judgment ordering that the premises be vacated and that all persons be removed. The judgment ordering that the dwelling be vacated shall be enforced in the same manner as the judgment for summary ejectment entered under G.S. 42-30. An appeal from any judgment entered hereunder by the magistrate may be taken as provided in G.S. 7A-228, and the execution of such judgment may be stayed as provided in G.S. 7A-227. An action to remove an occupant of a dwelling who is a tenant of the owner may not be in the nature of a summary ejectment proceeding pursuant to this paragraph unless such occupant was served with notice at least 30 days before the filing of the summary ejectment proceeding that the governing body has ordered the public officer to proceed to exercise his duties under paragraphs 4 and 5 of this section to vacate and close or remove and demolish the dwelling."

Sec. 2. This act shall become effective October 1, 1987.

In the General Assembly read three times and ratified this the 3rd day of July, 1987.

S.B. 254

CHAPTER 543

AN ACT TO AMEND THE LAW GOVERNING SANITATION OF INSTITUTIONS AND DAY-CARE FACILITIES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 130A-235 is amended by deleting the first sentence and substituting "For protection of the public health, the Commission shall adopt rules to establish sanitation requirements for

all institutions and facilities at which individuals are provided room or board and for which a license to operate is required to be obtained or a certificate for payment is obtained from the Department. The rules shall also apply to facilities that provide room and board to individuals but are exempt from licensure under G.S. 131D-10.4(1). No other State agency may adopt rules to establish sanitation requirements for these institutions and facilities. The Department shall issue a license to operate or a certificate for payment to such an institution or facility only upon compliance with all applicable sanitation rules of the Commission, and the Department may suspend or revoke a license or a certificate for payment for violation of these rules. In adopting rules pursuant to this section, the Commission shall define categories of standards to which such institutions and facilities shall be subject and shall establish criteria for the placement of any such institution or facility into one of the categories."

Sec. 2. G.S. 110-88(3) is amended in the second sentence by deleting ", sanitation,".

Sec. 3. G.S. 110-91(1) is amended by deleting the first sentence and substituting "The Commission for Health Services shall adopt rules which establish minimum sanitation standards for day-care facilities and their personnel." G.S. 110-91(1) is also amended in the second sentence by deleting the words "The health and sanitation standards developed" and substituting "The sanitation rules adopted". G.S. 110-91(1) is further amended by deleting the last sentence in the first paragraph of this subdivision.

Sec. 4. G.S. 110-92 is amended by deleting the words "developed by" and substituting "adopted as rules", and is also amended by deleting "by the Commission and provided by the Department" and substituting "and provided by the Department".

Sec. 5. G.S. 110-93(a) is amended in the third sentence, after "conformity with" and before "the", by inserting "rules adopted by the Commission for Health Services pursuant to G. S. 110-91(1) and with".

Sec. 6. G.S. 110-93(b) is amended in the first sentence, after the word "the" and before the word "standards", by inserting "rules adopted by the Commission for Health Services pursuant to G.S. 110-91(1) and with the", and is also amended in the second sentence, after the word "required" and before the word "standards,", by inserting "rules and".

Sec. 7. G.S. 110-104 is amended in the second sentence, after the word "Commission" and before the word "that", by inserting "or the Commission for Health Services".

Sec. 8. This act shall be effective February 1, 1988. However, upon ratification of this act, the Commission for Health Services is authorized to adopt rules pursuant to authority granted under this act. These rules shall not be effective before February 1, 1988.

In the General Assembly read three times and ratified this the 3rd day of July, 1987.

H.B. 479

CHAPTER 544

AN ACT TO CLARIFY THAT FOR RECURRING TAX PURPOSES THERE IS A CONCLUSIVE PRESUMPTION THAT PROPERTY INVOLVED IN THE PRIOR TRANSFER, OR ITS EQUIVALENT VALUE, IS A PART OF THE PRESENT DECEDENT'S ESTATE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-14(c) reads as rewritten:

"(c) For the purposes of this section, the personal representative shall conclusively presume that the property involved in the prior transfer or its equivalent value is a part of the present decedent's estate. The personal representative shall identify the property or its equivalent value and its taxable value in the prior transfer in a manner prescribed by the Secretary of Revenue; however, the personal representative shall not be required to verify to the Secretary of Revenue that the subject property or its proceeds constitute part of the present decedent's estate."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 3rd day of July, 1987.

H.B. 622

CHAPTER 545

AN ACT TO PROVIDE OFFICIAL LICENSE PLATES FOR THE CLERKS OF SUPERIOR COURT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-81(3) is amended by adding a new subdivision to read:

"c1. Clerks of Superior Court. Official plates shall be issued upon request to the various clerks of superior court which plate shall bear the words 'Clerk Superior Court' followed by the numerical designation of their respective counties in alphabetical order, beginning with 100 and preceded by the letter 'C'."

Sec. 2. This act shall become effective October 1, 1987.

In the General Assembly read three times and ratified this the 8th day of July, 1987.

H.B. 797

CHAPTER 546

AN ACT AUTHORIZING THE COMBINED MUNICIPALITIES OF APEX, HOLLY SPRINGS AND FUQUAY-VARINA TO ESTABLISH AN AIRPORT AUTHORITY FOR THE PURPOSE OF ACQUIRING LANDS, CONSTRUCTING AND OPERATING AN AIRPORT AND VESTING IN SAID AIRPORT AUTHORITY ALL POWERS SET OUT IN CHAPTER 63 OF THE GENERAL STATUTES OF NORTH CAROLINA.

Whereas, the Board of Commissioners of the Towns of Apex, Holly Springs and Fuquay-Varina have unanimously requested the introduction of the following legislation; Now, therefore,

The General Assembly of North Carolina enacts:

Section 1. There is hereby created an airport authority to be known as "WakeSouth Regional Airport" which shall be a body politic and corporate. The said authority shall be composed of six members, two appointed by the Board of Commissioners of the municipality of Apex, two by the Board of Commissioners of the municipality of Holly Springs and two by the Board of Commissioners of the municipality of Fuquay-Varina. The said members shall be allowed a reasonable compensation and shall be paid actual expenses incurred in the transaction of business at the instance of the authority provided however, that a full-time employee of either municipality or an elected member of the Board of Commissioners of either municipality shall not be paid a reasonable compensation for his services but shall be entitled to reimbursement of actual expenses.

Sec. 2. The initial term of one member appointed by each Board of Commissioners as above set out shall serve two years and the other member appointed by said Board of Commissioners shall serve three years and then each Board of Commissioners shall appoint one member every year thereafter from the expiration of the first two-year appointee's term. The authority shall determine its own organization and shall annually at the first meeting in January of each calendar year elects its officers who shall serve for terms of one year. Officers shall be eligible to succeed themselves in office and shall be eligible to serve consecutive terms at the will of their respective Board of Commissioners.

Sec. 3. (a) The authority shall, in addition to the powers conferred in Chapter 63 of the General Statutes of North Carolina, have the following powers:

- (1) To sue and be sued in the name of the airport authority and all pleadings served upon the airport authority shall be served of the chairperson or the secretary of the airport authority.
- (2) To expend funds appropriated from time to time by the said municipalities, jointly or severally, for joint airport purposes and to appropriate and expend funds received by it from fees, charges, rents and dues arising out of the operation of said airport, the facilities, improvements and concessions located thereat or operated thereon.
- (3) To establish, construct, control, lease, maintain, improve, operate and regulate an airport with buildings necessary to accommodate all types of business to operate an airport, runways, taxi ramps, parking ramps, and any equipment to operate an airport, to have complete authority for rules and regulations over all airport property for the control of all types of vehicular traffic, mobile or stationary, and pedestrian traffic with respect to areas or roadways not under the control of the Department of Transportation and any rules and regulations adopted by the airport authority for property exclusively under its control and to have conjunctive authority to work with and cooperate with all other duly constituted law enforcement agencies to enforce rules and regulations established by the State of North Carolina. The penalty for the violation of rules and regulations established by the airport authority shall be a misdemeanor and upon conviction, shall be punishable by a fine not to exceed fifty dollars (\$50.00) or imprisonment not to exceed 30 days. All rules and regulations so adopted by the airport authority shall be recorded by certified true copies by the chairperson and secretary of the authority with the municipalities of Apex, Holly Springs and Fuquay-Varina.
- (4) To acquire property by gift, devise, negotiated purchase or condemnation, and if by condemnation, then the procedure to be followed shall be the procedure set out in Article 9 of Chapter 136 of the General Statutes of North Carolina and shall have all powers therein granted. The said airport authority shall have authority to dispose of land, improvements or equipment owned by it. If property acquired by condemnation shall have a graveyard, then it shall be lawful for said airport authority, after 30 days

notice, to the surviving spouse or the next of kin of the deceased buried therein, or the person in control of such graves, if any are known, to remove the body interred therein and re-inter the same in some cemetery in the same county. If no surviving spouse or next of kin or person in control can be found, then the airport authority can advertise for four consecutive weeks in a newspaper published in Wake County of the intended removal of said gravesite and the removal shall be conducted under the supervision of the Wake County Clerk of Court or his representative and the expense of said removal shall be borne by the airport authority.

- (5) To lease for a term not to exceed 40 years and for purposes not inconsistent with airport purposes or usage, real and/or personal property under the supervision of or administered by the airport authority.
- (6) To contract with persons, firms or corporations for terms not to exceed 40 years, for the operation of passenger and freight flights, scheduled or nonscheduled, and any other plane or flight activities not inconsistent with airport operations and to charge and collect reasonable fees, charges, and rents for the use of such property and services rendered in the operation thereof.
- (7) To operate, own, control, regulate, lease or grant to others the license to operate amusements or concessions for a term not exceeding 40 years.
- (8) To enter into contracts and to pledge as security the property of the airport authority, provided however, that neither the airport authority nor the individual members thereof shall have authority to pledge the credit of or contract for the municipalities of Apex, Holly Springs or Fuquay-Varina or any combination of them. The airport authority is authorized to pledge any lease as security for any loan.
- (9) To borrow money for the use of making improvements to the airport property which capital improvement loans may be long term to the extent of moneys appropriated by the joint or several Boards of Commissioners of the municipalities of Apex, Holly Springs and Fuquay-Varina and to borrow money for operating purposes, which operating loan shall not become due in excess of 12 months from the date of the loan and which operating loan shall be repayable solely out of the operating revenues of the airport.

- (10) To adopt and use a seal.
- (11) To contract with the Federal Aviation Administration of the United States of America or the State of North Carolina or any of their agencies or representatives relating to the grading, constructing, equipping, improving, maintaining or operating of an airport or its facilities.

(b) The airport authority shall not be liable for damages arising from injuries to persons or property caused by or growing out of fueling, refueling, or servicing any aircraft at said airport.

Sec. 4. The WakeSouth Regional Airport authority may exercise the powers granted political subdivisions under the Model Airport Zoning Act contained in Article 4, Chapter 63 of the General Statutes and may exercise the powers granted to municipalities by the terms of Article 6, Chapter 63, of the General Statutes concerning public airports and related facilities.

Sec. 5. WakeSouth Regional Airport authority may issue bonds, securities, and notes, as provided by Chapter 159 of the General Statutes. The said bonds, securities or notes shall not be obligations of the municipalities of Apex, Holly Springs or Fuquay-Varina, but the airport authority is authorized to pledge the revenues, rents, income and tolls arising from the operation of said airport until the sums borrowed therefor are fully amortized and paid.

Sec. 6. It is hereby declared to be the policy of the State of North Carolina to promote, encourage and develop air transportation, service and facilities in connection with commerce of the United States of America and to foster and preserve air transportation; and the area within Wake County is hereby declared to be an area which should be developed in connection with the interior of the State of North Carolina and other states and it is hereby declared to be necessary and desirable and in the public interest of the entire State to establish air transportation facilities and the said airport authority herein created shall be regarded as performing an essential governmental function in undertaking the construction, maintenance and operation of an airport and shall not be required to pay ad valorem taxes or assessments upon properties acquired or otherwise used for it for such purposes.

Sec. 7. In the event of cessation of the operation of an airport established under this act, or the abandonment of any of the property acquired hereunder for airport purposes, the title to any real or personal or rights under any existing lease shall revert to and vest in the municipalities of Apex, Holly Springs and Fuquay-Varina and upon the sale of any property after cessation of operations, the

proceeds therefrom shall vest equally in each said municipality.

Sec. 8. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 3rd day of July, 1987.

S.B. 410

CHAPTER 547

AN ACT TO AUTHORIZE TRAFFIC LANES FOR RUSH HOUR TRAFFIC.

The General Assembly of North Carolina enacts:

Section 1. Chapter 20 of the General Statutes is amended by adding a new section to read:

"§ 20-146.2. *Rush hour traffic lanes authorized.*--(a) The Department of Transportation may designate one or more travel lanes as high occupancy vehicle (HOV) lanes on streets and highways on the State Highway System and cities may designate one or more travel lanes as high occupancy vehicle (HOV) lanes on streets on the Municipal Street System. HOV lanes shall be reserved for vehicles with a specified number of passengers as determined by the Department of Transportation or the city having jurisdiction over the street or highway. When HOV lanes have been designated, and have been appropriately marked with signs or other markers, they shall be reserved for privately or publicly operated buses, and automobiles or other vehicles containing the specified number of persons.

(b) The Department of Transportation may modify, upgrade, and designate shoulders of controlled access facilities and partially controlled access facilities as temporary travel lanes during peak traffic periods. When these shoulders have been appropriately marked, it shall be unlawful to use these shoulders for stopping or emergency parking. Emergency parking areas shall be designated at other appropriate areas, off these shoulders, when available.

(c) The Department of Transportation may designate travel lanes for the directional flow of peak traffic on streets and highways on the State Highway System and cities may designate travel lanes for the directional flow of peak traffic on streets on the Municipal Street System. These travel lanes may be designated for time periods by the agency controlling the streets and highways."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 3rd day of July, 1987.

S.B. 337

CHAPTER 548

AN ACT TO PROVIDE A PROCEDURE FOR THE
REGISTRATION OF INHERITANCE AND ESTATE TAX
WAIVERS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-20 is amended by deleting the period at the end of the section and adding the following:

" : Provided further, that no taxes imposed by this Article shall be a lien upon real property that is released by an Inheritance or Estate Tax Waiver issued by the Secretary of Revenue. An Inheritance or Estate Tax Waiver issued by the Secretary of Revenue and bearing the signature or official facsimile signature of the Secretary of Revenue covering real property may be registered in the office of the Register of Deeds of the county or counties where the real estate described in the waiver is located. No formalities as to acknowledgement, probate, or approval by any officer shall be required as a condition to such registration. An Inheritance or Estate Tax Waiver so registered shall be conclusive evidence that the real property described in such waiver is not subject to the lien of any taxes imposed by this Article."

Sec. 2. G.S. 105-31 is amended by rewriting the last sentence to read:

"No title or interest to such estate, funds, assets, or property shall pass, and no disposition thereof shall be made by any person claiming an interest therein until said taxes have been fully paid or until the Secretary of Revenue has released such property by the issuance of an Inheritance or Estate Tax Waiver."

Sec. 3. Chapter 47 of the General Statutes is amended by adding a new section immediately after G.S. 47-18.1 to read:

"§ 47-18.2. *Registration of Inheritance and Estate Tax Waiver.*--An Inheritance and Estate Tax Waiver or other consent to transfer issued by the Secretary of Revenue bearing the signature of the Secretary of Revenue or the official facsimile signature of the Secretary of Revenue may be registered by the Register of Deeds in the county or counties where the real estate described in the Inheritance and Estate Tax Waiver or consent to transfer is located in the same manner as deeds, and for the same fees, but no formalities as to acknowledgement, probate, or approval by an officer shall be required. The name of the decedent owning the real property at death shall appear in the 'Grantor' index. Nothing herein shall require a personal representative or other person interested in the decedent's estate to

register Inheritance and Estate Tax Waivers or consents to transfer."

Sec. 4. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 3rd day of July, 1987.

S.B. 348

CHAPTER 549

AN ACT TO PERMIT VOTERS TO REPORT CHANGES OF ADDRESS WITHIN THE COUNTY BY POSTCARD, AND CONCERNING THE ELECTION OF THE MARTIN COUNTY BOARD OF EDUCATION AND OTHER ELECTION MATTERS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 163-72.2(b) reads as rewritten:

"(b) In lieu thereof, the voter may in person, or by ~~returnable~~ first class mail, file a written report with the county board of elections, signed in his own hand, setting forth:

- (1) His full name,
- (2) His former residence address,
- (3) His new residence address, and
- (4) The date he moved to the new address.

The voter shall sign his name himself and shall not cause or allow his signature to be signed by any other person unless he is unable to sign his name himself."

Sec. 1.1. Beginning with the 1988 regularly scheduled election for county boards of education, the Martin County Board of Education shall be elected from the seven districts described in Section 4 of this act. Only voters who reside in a district may vote in the election for that district.

Sec. 2. In 1988 and every four years thereafter elections shall be held to elect one member each from Districts 3, 5 and 7. In 1988 an election also shall be held in District 6 to elect one member for a term to expire in 1990. In 1990 and every four years thereafter elections shall be held to elect one member each from Districts 1, 2, 4 and 6.

Sec. 3. The seven current members of the Board may serve the remainder of their terms, three of which are due to expire in 1988 and four of which are due to expire in 1990. Following the 1988 election, the Board members whose terms do not expire until 1990 shall be assigned to seats for the districts in which they reside as follows: District 1 -- Warren Ward; District 2 -- Denyse Smith; District 4 -- Taylor Slade. In addition, current member David Whitley, who was elected from the county at-large for a term to expire in 1990, shall be entitled to continue to serve the remainder of his

term as an at-large member.

If Mr. Whitley or either of the two incumbents who reside in District 6, Wayne Peel and Edward D. Price, vacates his office at any time before the members elected in 1988 take office, a replacement shall be appointed from a district in which no incumbent resides, and that replacement shall represent that district until the members elected in 1988 take office. If Mr. Whitley's office becomes vacant after the members elected in 1988 take office, no replacement shall be chosen.

Unless the one at-large position is vacated, after the 1988 election the Board will consist of eight members, seven representing districts and one representing the county at-large. The Board shall be reduced from eight to seven members as soon as the at-large position becomes vacant or the term of the incumbent expires in 1990.

Sec. 4. The seven election districts are as follows:

District 1. All of Goose Nest and Hamilton townships.

District 2. That portion of Robersonville Township west of a line running roughly north to south from the boundary between Hamilton and Robersonville townships as follows: South on State Road 1306 to the intersection with Highway 903, north on 903 to the intersection with State Road 1400, southwest on 1400 to the Robersonville town limits, following the town limits around the eastern side of the town to the intersection with Highway 903 south of town, south on 903 to the intersection with State Road 1148, east on 1148 to the intersection with State Road 1145, east on 1145 to the intersection with the boundary dividing Robersonville and Cross Roads townships, south along that boundary to the county line.

District 3. The portion of Robersonville Township not in District 2 plus all of Cross Roads and Bear Grass townships.

District 4. All of Poplar Point Township, the portion of Williamston Township outside the City of Williamston and north of State Road 1142 (1980 census enumeration District 34), and portion of the City of Williamston north of District 5.

District 5. The portion of the City of Williamston within the following boundary running clockwise from the intersection of Haughton Street with the city limits on the north side of the city: South on Haughton Street to the intersection with Church Street, east on Church to the intersection with School Drive, north on School to the intersection with Hallifax Street, east on Hallifax to the intersection with Henderson Street, north on Henderson to the intersection with

Franklin Street, east from Franklin along the creek to the city limits and the Roanoke River, south on the River to Highway 17, west on 17 to the intersection with Main Street, north and west on Main to the intersection with Haughton Street, south on Haughton to the intersection with Washington Street, south and west on Washington to the intersection with the Atlantic Coast Line Railroad tracks, south on the tracks to the city limits, following the city limits around the western side of the city back to the intersection with Haughton Street north of the city.

District 6. The portions of Williamston Township and the City of Williamston not in District 4 or 5, plus all of Griffins Township.

District 7. All of Williams and Jamesville Townships.

Sec. 5. Vacancies on the Board shall be filled in the manner provided by State law. The person appointed to fill a vacancy must reside in the same district as the member whose seat is being vacated, except as provided in Section 3 of this act.

Sec. 6. Chapter 380 of the 1971 Session Laws and Chapter 42 of the 1975 Session Laws are repealed.

Sec. 6.1. G.S. 163-213.4 as rewritten by Chapter 81, Session Laws of 1987 is amended by deleting "second Tuesday in December" and substituting "first Tuesday in January".

Sec. 6.2. G.S. 163-213.6 is amended by deleting ", upon his written request, to be filed with the Board within 15 days of the notice to him by the Board,".

Sec. 6.3. Notwithstanding G.S. 163-294.2 or G.S. 163-291, notices of candidacy for the 1987 municipal elections in the City of Albemarle and the City of Asheboro shall be filed no earlier than noon on July 31, 1987 and no later than noon on August 21, 1987.

Sec. 6.4. Section 3 of the Charter of the Town of Enfield, as enacted by Chapter 970 of the Session Laws of 1967, is rewritten to read:

"Sec. 3. Powers of Town Vested in Mayor and Commissioners; Mayor to Vote in Case of Tie; Mayor Pro Tem; Vacancies. (a) All powers conferred upon the Town of Enfield and the administration of the government thereof shall be exercised by and vested in a principal executive officer styled the Mayor, and five commissioners, who shall serve in a legislative capacity and who are designated the Board of Town Commissioners. All elections shall be nonpartisan with winners determined by a plurality.

(b) For purposes of Town elections, the Town is divided into two districts. District A consists of the area east of the Seaboard Coast Line Railroad tracks (all currently in Precinct No. 2) and District B consists of the area west of the railroad tracks (currently in Precincts No. 1 and 3).

(c) In 1987 the following commissioners shall be elected:

(1) Two commissioners shall be elected to represent District A. Only voters residing in District A shall be eligible to vote for these seats. All candidates for these two seats shall be listed together on the ballot. The candidate receiving the most votes shall be elected for a four-year term. The candidate receiving the next highest number of votes shall be elected for a two-year term.

(2) One commissioner shall be elected by all the voters of the town for a four-year term.

(d) In 1989 and subsequent years, elections for commissioners shall be conducted as follows:

(1) Two commissioners shall be elected to represent District A. One shall be elected in 1989 and every four years thereafter. The other shall be elected in 1991 and every four years thereafter. Only voters residing in District A shall be eligible to vote for these seats.

(2) Two commissioners shall be elected in 1989 to represent District B. Only voters residing in District B shall be eligible to vote for these seats. All candidates for these two seats shall be listed together on the ballot. The candidate receiving the most votes shall be elected for a four-year term. The candidate receiving the next highest number of votes shall be elected for a two-year term. Their successors shall be elected for four-year terms.

(3) One commissioner shall be elected by all voters of the town. That commissioner shall be elected in 1991 and every four years thereafter.

(e) Commissioners presently on the Board shall be entitled to serve the remainder of their terms.

(f) In 1987 an election shall be held as previously scheduled to elect a person to serve the last two years of the unexpired term of mayor. Subsequent elections for mayor shall be held in 1989 and every four years thereafter. All voters in the town shall be eligible to vote for mayor.

(g) The mayor shall be ex officio chairman of the Board of Town Commissioners and shall have a right to vote in all cases where there is a tie vote of the Board. The Board shall elect from its members a mayor pro tem who shall perform the duties of the office of mayor if for any reason the mayor is absent or unable to perform those duties.

If there is a vacancy in the office of mayor, the mayor pro tem shall hold the office of mayor until the next regularly scheduled election for Town officers, at which time a new mayor shall be elected to serve the remainder of the unexpired term.

(h) Whenever a vacancy occurs in the Board of Town Commissioners, the remaining members of the Board shall appoint a person to fill the vacancy for the remainder of the unexpired term. The person appointed to fill a vacancy from District A or B must reside in the same district as the departing member.

(i) A majority of the Board shall constitute a quorum at any meeting."

Sec. 6.5. If Section 6.4 of this act is not precleared pursuant to Section 5 of the Voting Rights Act at least one week before filing is scheduled to open for the 1987 election, the Halifax County Board of Elections shall adopt a new filing period, of the same duration, to commence at a time set by that Board after notification of preclearance.

Sec. 6.6. G.S. 7A-41(d)(54), as enacted by Chapter 509, Session Laws of 1987, is amended by deleting "twenty-seventh-C" and substituting "twenty-sixth-C".

Sec. 6.7. If the provisions of Chapter 193, Session Laws of 1987, are not precleared pursuant to Section 5 of the Voting Rights Act by the time of opening of filing for the Pitt County Board of Education for the 1987 election, the Pitt County Board of Elections shall adopt a new filing period, of the same duration, to commence at a time set by that Board after notification of preclearance.

-----MOORE PRECINCT BOUNDARIES

Sec. 6.8. Section 2 of Chapter 225, Session Laws of 1983, as amended by Chapter 827, Session Laws of 1985, is amended by adding immediately after "Randolph," the word "Moore,".

-----GRANDFATHER VILLAGE ELECTION NOTICE

Sec. 6.9. Section 2 of Chapter 419, Session Laws of 1987, is amended by adding a new subsection to read:

"(c) Notwithstanding Chapter 163 of the General Statutes, public notice of the election shall be given no later than 10 days prior to the close of registration before said election, or as soon thereafter as practicable."

-----DURHAM CANDIDATE FILING

Sec. 6.10. For the 1987 municipal election, notwithstanding the first sentence of G.S. 163-294.2(b), persons who are registered voters in Durham County who reside within an area not within the corporate limits of the City of Durham on the date of closing of filing under G.S. 163-294.2(c), where that area will be within the corporate

limits no later than September 30, 1987, may file notices of candidacy for the Durham city election. The remainder of G.S. 163-294.2(b) shall continue to apply.

Sec. 6.11. In handling notices of candidacy for the 1987 Durham city election, the ward boundaries adopted by the City Council shall be used.

Sec. 6.12. The State Board of Elections shall, upon written request, authorize counties to utilize paper ballots in multi-candidate contests where the optical scan ballot counters are not programmable to count such ballots in accordance with law.

Sec. 6.13. In the event that any portion of this act is held to be unenforceable, that shall not affect the remainder of this act.

Sec. 7. This act is effective upon ratification, except that Section 1 shall become effective September 1, 1987.

In the General Assembly read three times and ratified this the 3rd day of July, 1987.

H.B. 954

CHAPTER 550

AN ACT TO REWRITE THE LAWS RELATING TO INCOMPETENCE AND GUARDIANSHIP.

The General Assembly of North Carolina enacts:

Section 1. The General Statutes are amended by adding a new Chapter 35A to read as follows:

"Chapter 35A.

"Incompetency and Guardianship.

"SUBCHAPTER I. PROCEEDINGS TO DETERMINE INCOMPETENCE.

"Article 1.

"Determination of Incompetence.

"§ 35A-1101. *Definitions.*--When used in this Subchapter:

(1) 'Autism' means a physical disorder of the brain which causes disturbances in the developmental rate of physical, social, and language skills; abnormal responses to sensations; absence of or delay in speech or language; or abnormal ways of relating to people, objects, and events. Autism occurs sometimes by itself and sometimes in conjunction with other brain-functioning disorders.

(2) 'Cerebral palsy' means a muscle dysfunction, characterized by impairment of movement, often combined with speech impairment, and caused by abnormality of or damage to the brain.

(3) 'Clerk' means the clerk of superior court.

(4) 'Designated agency' means the State or local human resources agency designated by the clerk in his order to prepare, cause to be prepared, or assemble a multidisciplinary evaluation and to perform

other functions as the clerk may order. A designated agency includes, without limitation, State, local, regional, or area mental health, mental retardation, vocational rehabilitation, public health, social service, and developmental disabilities agencies, and diagnostic evaluation centers.

(5) 'Epilepsy' means a group of neurological conditions characterized by abnormal electrical-chemical discharge in the brain. This discharge is manifested in various forms of physical activity called seizures, which range from momentary lapses of consciousness to convulsive movements.

(6) 'Guardian *ad litem*' means a guardian appointed pursuant to G.S. 1A-1, Rule 17, Rules of Civil Procedure.

(7) 'Incompetent adult' means an adult or emancipated minor who lacks sufficient capacity to manage his own affairs or to make or communicate important decisions concerning his person, family, or property whether such lack of capacity is due to mental illness, mental retardation, epilepsy, cerebral palsy, autism, inebriety, senility, disease, injury, or similar cause or condition.

(8) 'Incompetent child' means a minor who is at least 17 1/2 years of age and who, other than by reason of his minority, lacks sufficient capacity to make or communicate important decisions concerning his person, family, or property whether such lack of capacity is due to mental illness, mental retardation, epilepsy, cerebral palsy, autism, inebriety, disease, injury, or similar cause or condition.

(9) 'Indigent' means that a person is unable to pay for legal representation and other necessary expenses of a proceeding brought under this Subchapter.

(10) 'Inebriety' means the condition of any person who habitually, whether continuously or periodically, indulges in the use of alcoholic beverages, narcotics, or drugs to such an extent as to stupefy his mind and render him incompetent to transact ordinary business with safety to his estate; or who renders himself, by reason of the use of alcoholic beverages, narcotics, or drugs, dangerous to person or property; or who, by the frequent use of alcoholic beverages, narcotics, or drugs, renders himself cruel and intolerable to his family, or fails from such cause to provide his family with reasonable necessities of life.

(11) 'Interim guardian' means a guardian of the person, appointed prior to adjudication of incompetence and for a temporary period, for a respondent who requires immediate intervention to address conditions that constitute imminent or foreseeable danger to his physical well-being.

(12) 'Mental illness' means an illness that so lessens the capacity of the person to use self-control, judgment, and discretion in the conduct of his affairs and social relations as to make it necessary or advisable for him to be under treatment, care, supervision, guidance, or control. The term 'mental illness' encompasses 'mental disease', 'mental disorder', 'lunacy', 'unsoundness of mind', and 'insanity'.

(13) 'Mental retardation' means significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested before age 22.

(14) 'Multidisciplinary evaluation' means an evaluation that contains current medical, psychological, and social work evaluations as directed by the clerk and that may contain current evaluations by professionals in other disciplines, including without limitation education, vocational rehabilitation, occupational therapy, vocational therapy, psychiatry, speech-and-hearing, and communications disorders. The evaluation is current if made not more than one year from the date on which it is presented to or considered by the court. The evaluation shall set forth the nature and extent of the disability and recommend a guardianship plan and program.

(15) 'Respondent' means a person who is alleged to be incompetent in a proceeding under this Subchapter.

(16) 'Treatment facility' has the same meaning as 'facility' in G.S. 122C-3(14), and includes group homes, halfway houses, and other community-based residential facilities.

(17) 'Ward' means a person who has been adjudicated incompetent or an adult or minor for whom a guardian has been appointed by a court of competent jurisdiction.

" § 35A-1102. *Scope of law; exclusive procedure.*--This Article establishes the exclusive procedure for adjudicating a person to be an incompetent adult or an incompetent child.

" § 35A-1103. *Jurisdiction; venue.*--(a) The clerk in each county shall have original jurisdiction over proceedings under this Subchapter.

(b) Venue for proceedings under this Subchapter shall be in the county in which the respondent resides or is domiciled or is an inpatient in a treatment facility. If the county of residence or domicile cannot be determined, venue shall be in the county where the respondent is present.

(c) If proceedings involving the same respondent are brought under this Subchapter in more than one county in which venue is proper, venue shall be in the county in which proceedings were commenced first.

(d) If the clerk in the county in which a proceeding under this Subchapter is brought has an interest, direct or indirect, in the proceeding, jurisdiction with respect thereto shall be vested in any superior court judge residing or presiding in the district, and the jurisdiction of the superior court judge shall extend to all things which the clerk might have done.

" § 35A-1104. *Change of venue.*--The clerk, on motion of a party or the clerk's own motion, may order a change of venue upon finding that no hardship or prejudice to the respondent will result from a change of venue.

" § 35A-1105. *Petition before clerk.*--A verified petition for the adjudication of incompetence may be filed with the clerk by any person, including any State or local human resources agency through its authorized representative.

" § 35A-1106. *Contents of petition.*--The petition shall set forth, to the extent known:

(1) The name, age, address, and county of residence of the respondent;

(2) The name, address, and county of residence of the petitioner, and his interest in the proceeding;

(3) A general statement of the respondent's assets and liabilities with an estimate of the value of any property, including any compensation, insurance, pension, or allowance to which he is entitled;

(4) A statement of the facts tending to show that the respondent is incompetent and the reason or reasons why the adjudication of incompetence is sought;

(5) The name, address, and county of residence of the respondent's next of kin and other persons known to have an interest in the proceeding;

(6) Facts regarding the adjudication of respondent's incompetence by a court of another state, if an adjudication is sought on that basis pursuant to G.S. 35A-1113(1).

" § 35A-1107. *Right to counsel or guardian ad litem.*--The respondent is entitled to be represented by counsel of his own choice or by court-appointed guardian *ad litem*. Upon filing of the petition, the clerk shall appoint as guardian *ad litem* an attorney who shall represent the respondent unless the respondent retains his own counsel, in which event the clerk may discharge the guardian *ad litem*.

" § 35A-1108. *Issuance of notice.*--(a) Within five days after filing of the petition, the clerk shall issue a written notice of the date, time, and place for a hearing on the petition, which shall be held not less

than 10 days nor more than 30 days after service of the notice and petition on the respondent, unless the clerk extends the time for good cause or for preparation of a multidisciplinary evaluation as provided in G.S. 35A-1111.

(b) If a multidisciplinary evaluation is ordered after a notice of hearing has been issued, the clerk may extend the time for hearing and issue a notice to the parties that the hearing has been continued, the reason therefor, and the date, time, and place of the new hearing, which shall not be less than 10 days nor more than 30 days after service of such notice on the respondent.

(c) Subsequent notices to the parties shall be served as provided by G.S. 1A-1, Rule 5, Rules of Civil Procedure, unless the clerk orders otherwise.

"§ 35A-1109. *Service of notice and petition.*--Copies of the petition and initial notice of hearing shall be personally served on the respondent. Respondent's counsel or guardian *ad litem* shall be served pursuant to G.S. 1A-1, Rule 4, Rules of Civil Procedure. A sheriff who serves the notice and petition shall do so without demanding his fees in advance. The petitioner, within five days after filing the petition, shall mail or cause to be mailed, by first-class mail, copies of the notice and petition to the respondent's next of kin alleged in the petition and any other persons the clerk may designate. Proof of such mailing shall be by affidavit filed with the clerk. The clerk shall mail, by first-class mail, copies of subsequent notices to the next of kin alleged in the petition and to such other persons as the clerk deems appropriate.

"§ 35A-1110. *Right to jury.*--The respondent has a right, upon request by him, his counsel, or his guardian *ad litem*, to trial by jury. Failure to request a trial by jury shall constitute a waiver of the right. The clerk may nevertheless require trial by jury in accordance with G.S. 1A-1, Rule 39(b), Rules of Civil Procedure, by entering an order for trial by jury on his own motion. The jury shall be composed of 12 persons chosen from the county's jury list in accordance with the provisions of Chapter 9 of the General Statutes.

"§ 35A-1111. *Multidisciplinary evaluation.*--(a) To assist in determining the nature and extent of a respondent's disability, or to assist in developing an appropriate guardianship plan and program, the clerk, on his own motion or the motion of any party, may order that a multidisciplinary evaluation of the respondent be performed. A request for a multidisciplinary evaluation shall be made in writing and filed with the clerk within 10 days after service of the petition on the respondent.

(b) If a multidisciplinary evaluation is ordered, the clerk shall name a designated agency and order it to prepare, cause to be prepared, or assemble a current multidisciplinary evaluation of the respondent. The agency shall file the evaluation with the clerk not later than 30 days after the agency receives the clerk's order. The multidisciplinary evaluation shall be filed in the proceeding for adjudication of incompetence, in the proceeding for appointment of a guardian under Subchapter II of this Chapter, or both. Unless otherwise ordered by the clerk, the agency shall send copies of the evaluation to the petitioner and the counsel or guardian *ad litem* for the respondent not later than 30 days after the agency receives the clerk's order. The evaluation shall be kept under such conditions as directed by the clerk and its contents revealed only as directed by the clerk. The evaluation shall not be a public record and shall not be released except by order of the clerk.

(c) If a multidisciplinary evaluation does not contain medical, psychological, or social work evaluations ordered by the clerk, the designated agency nevertheless shall file the evaluation with the clerk and send copies as required by subsection (b). In a transmittal letter, the agency shall explain why the evaluation does not contain such medical, psychological, or social work evaluations.

(d) The clerk may order that the respondent attend a multidisciplinary evaluation for the purpose of being evaluated.

(e) The multidisciplinary evaluation may be considered at the hearing for adjudication of incompetence, the hearing for appointment of a guardian under Subchapter II of this Chapter, or both.

" § 35A-1112. *Hearing on petition; adjudication order.*--(a) The hearing on the petition shall be at the date, time, and place set forth in the final notice of hearing and shall be open to the public unless the respondent or his counsel or guardian *ad litem* requests otherwise, in which event the clerk shall exclude all persons other than those directly involved in or testifying at the hearing.

(b) The petitioner and the respondent are entitled to present testimony and documentary evidence, to subpoena witnesses and the production of documents, and to examine and cross-examine witnesses.

(c) The clerk shall dismiss the proceeding if the finder of fact, whether the clerk or a jury, does not find the respondent to be incompetent.

(d) If the finder of fact, whether the clerk or the jury, finds by clear, cogent, and convincing evidence that the respondent is incompetent, the clerk shall enter an order adjudicating the respondent incompetent. The clerk may include in the order findings on the

nature and extent of the ward's incompetence.

(e) Following an adjudication of incompetence, the clerk shall either appoint a guardian pursuant to Subchapter II of this Chapter or, for good cause shown, transfer the proceeding for the appointment of a guardian to any county identified in G.S. 35A-1103. The transferring clerk shall enter a written order authorizing the transfer. The clerk in the transferring county shall transfer all original papers and documents, including the multidisciplinary evaluation, if any, to the transferee county and close his file with a copy of the adjudication order and transfer order.

(f) If the adjudication occurs in any county other than the county of the respondent's residence, a certified copy of the adjudication order shall be sent to the clerk in the county of the ward's legal residence, to be filed and indexed as in a special proceeding of that county.

(g) Except as provided in G.S. 35A-1114(f), a proceeding filed under this Article may be voluntarily dismissed as provided in G.S. 1A-1, Rule 41, Rules of Civil Procedure.

" § 35A-1113. *Hearing when incompetence determined in another state.*--When the petition alleges that the respondent is incompetent on the basis of an adjudication that occurred in another state, the clerk in his discretion may:

(1) adjudicate incompetence on the basis of the prior adjudication, if the clerk first finds by clear, cogent, and convincing evidence that:

- a. the respondent is represented by an attorney or guardian *ad litem*; and
- b. a certified copy of an order adjudicating the respondent incompetent has been filed in the proceeding; and
- c. the prior adjudication was made by a court of competent jurisdiction on grounds comparable to a ground for adjudication of incompetence under this Article; and
- d. the respondent, subsequent to the adjudication of incompetence in another state, assumed residence in North Carolina and needs a guardian in this State; or

(2) decline to adjudicate incompetence on the basis of the other state's adjudication, and proceed with an adjudicatory hearing as in any other case pursuant to this Article.

" § 35A-1114. *Appointment of interim guardian.*--(a) At the time of or subsequent to the filing of a petition under this Article, the petitioner may also file a verified motion with the clerk seeking the appointment of an interim guardian.

(b) The motion shall set forth facts tending to show that:

- (1) there is reasonable cause to believe that the respondent is incompetent, and
- (2) the respondent is in a condition that constitutes or reasonably appears to constitute an imminent danger to his physical well-being and that requires immediate intervention, and
- (3) the respondent needs an interim guardian to be appointed immediately to intervene on his behalf prior to the adjudication hearing.

(c) Upon filing of the motion for appointment of an interim guardian, the clerk shall immediately set a date, time, and place for a hearing on the motion. The motion and a notice setting the date, time, and place for the hearing shall be served promptly on the respondent and on his counsel or guardian *ad litem*. The hearing shall be held as soon as possible but no later than 15 days after the motion has been served on the respondent.

(d) If at the hearing the clerk finds that there is reasonable cause to believe that the respondent is incompetent, that the respondent is in a condition that constitutes or reasonably appears to constitute an imminent danger to his physical well-being, and that there is immediate need for a guardian to provide consent or take other steps to protect the respondent, the clerk shall immediately enter an order appointing an interim guardian.

(e) The clerk's order appointing an interim guardian shall include specific findings of fact to support the clerk's conclusions, and shall set forth the interim guardian's powers and duties. Such powers and duties shall extend only so far and so long as necessary to meet the respondent's condition, but shall in no event continue for more than 45 days or until a general guardian or guardian of the person is appointed, whichever occurs first; provided, the clerk may for good cause shown extend the period of interim guardianship for an additional 45 days. The interim guardian shall be a guardian of the person and not of the estate of the ward. The interim guardian shall not be required to post a bond.

(f) When a motion for appointment of an interim guardian has been made, the petitioner may voluntarily dismiss the petition for adjudication of incompetence only prior to the hearing on the motion for appointment of an interim guardian.

"§ 35A-1115. *Appeal from clerk's order.*--Appeal from an order adjudicating incompetence shall be to the superior court for hearing *de novo* and thence to the Court of Appeals. An appeal does not stay the

appointment of a guardian unless so ordered by the superior court or the Court of Appeals. The Court of Appeals may request the Attorney General to represent the petitioner on any appeal by the respondent to the Appellate Division of the General Court of Justice, but the Department of Justice shall not be required to pay any of the costs of the appeal.

" § 35A-1116. *Costs and fees.*--(a) Except as otherwise provided herein, costs shall be assessed as in special proceedings. Costs may be taxed against either party in the discretion of the court unless:

- (1) the clerk finds that the petitioner did not have reasonable grounds to bring the proceeding, in which case costs shall be taxed to the petitioner, or
- (2) the respondent is indigent, in which case the costs shall be waived by the clerk if not taxed against the petitioner as provided above or otherwise paid as provided in subsection (b) or (c).

(b) The cost of a multidisciplinary evaluation ordered pursuant to G.S. 35A-1111 shall be assessed as follows:

- (1) if the respondent is adjudicated incompetent and is not indigent, the cost shall be assessed against the respondent;
- (2) if the respondent is adjudicated incompetent and is indigent, the cost shall be borne by the Department of Human Resources;
- (3) if the respondent is not adjudicated incompetent, the cost may be taxed against either party, apportioned among the parties, or borne by the Department of Human Resources, in the discretion of the court.

(c) Witness fees and the fees of court-appointed counsel or guardian *ad litem* shall be paid by:

- (1) the respondent, if the respondent is adjudicated incompetent and is not indigent;
- (2) the petitioner, if the respondent is not adjudicated incompetent and the clerk finds that there were not reasonable grounds to bring the proceeding;
- (3) the Administrative Office of the Courts in all other cases.

"Article 2.

"Appointment of Guardian.

" § 35A-1120. *Appointment of guardian.*--If the respondent is adjudicated incompetent, a guardian or guardians shall be appointed in the manner provided for in Subchapter II of this Chapter.

"Article 3.

"Restoration to Competency.

" § 35A-1130. *Proceedings before clerk.*--(a) The guardian, ward, or any other interested person may petition for restoration of the ward to competency by filing a motion in the cause of the incompetency proceeding with the clerk who is exercising jurisdiction therein. The motion shall be verified and shall set forth facts tending to show that the ward is competent.

(b) Upon receipt of the motion, the clerk shall set a date, time, and place for a hearing, which shall be not less than 10 days or more than 30 days from service of the motion and notice of hearing on the ward and the guardian, or on the one of them who is not the petitioner, unless the clerk for good cause directs otherwise. The petitioner shall cause notice and a copy of the motion to be served on the guardian and ward (but not on one who is the petitioner) and any other parties to the incompetency proceeding. Service shall be in accordance with provisions of G.S 1A-1, Rule 4, Rules of Civil Procedure.

(c) At the hearing on the motion, the ward shall be entitled to be represented by counsel or guardian *ad litem*, and the clerk shall appoint a guardian *ad litem* if the ward is indigent and not represented by counsel. Upon motion of any party or the clerk's own motion, the clerk may order a multidisciplinary evaluation. The ward has a right, upon request by him, his counsel, or his guardian *ad litem* to trial by jury. Failure to request a trial by jury shall constitute a waiver of the right. The clerk may nevertheless require trial by jury in accordance with G.S. 1A-1, Rule 39(b), Rules of Civil Procedure, by entering an order for trial by jury on his own motion. Provided, if there is a jury in a proceeding for restoration to competency, it shall be a jury of six persons selected in accordance with the provisions of Chapter 9 of the General Statutes.

(d) If the clerk or jury finds by a preponderance of the evidence that the ward is competent, the clerk shall enter an order adjudicating that the ward is restored to competency. Upon such adjudication, the ward is authorized to manage his affairs, make contracts, control and sell his property, both real and personal, and exercise all rights as if he had never been adjudicated incompetent.

(e) The filing and approval of final accounts from the guardian and the discharge of the guardian shall be as provided in Subchapter II of this Chapter.

(f) If the clerk or jury fails to find that the ward should be restored to competency, the clerk shall enter an order denying the petition. The ward may appeal from the clerk's order to the superior court for trial *de novo*.

"SUBCHAPTER II. GUARDIAN AND WARD.**"Article 4.****"Purpose and Scope; Jurisdiction; Venue.**

" § 35A-1201. Purpose.--(a) The General Assembly of North Carolina recognizes that:

- (1) Some minors and incompetent persons, regardless of where they are living, require the assistance of a guardian in order to help them exercise their rights, including the management of their property and personal affairs.
 - (2) Incompetent persons who are not able to act effectively on their own behalf have a right to a qualified, responsible guardian.
 - (3) The essential purpose of guardianship for an incompetent person is to replace the individual's authority to make decisions with the authority of a guardian when the individual does not have adequate capacity to make such decisions.
 - (4) Limiting the rights of an incompetent person by appointing a guardian for him should not be undertaken unless it is clear that a guardian will give the individual a fuller capacity for exercising his rights.
 - (5) Guardianship should seek to preserve for the incompetent person the opportunity to exercise those rights that are within his comprehension and judgment, allowing for the possibility of error to the same degree as is allowed to persons who are not incompetent. To the maximum extent of his capabilities, an incompetent person should be permitted to participate as fully as possible in all decisions that will affect him.
 - (6) Minors, because they are legally incompetent to transact business or give consent for most purposes, need responsible, accountable adults to handle property or benefits to which they are entitled. Parents are the natural guardians of the person of their minor children, but unemancipated minors, when they do not have natural guardians, need some other responsible, accountable adult to be responsible for their personal welfare and for personal decision-making on their behalf.
- (b) The purposes of this Subchapter are:
- (1) to establish standards and procedures for the appointment of guardians of the person, guardians of the estate, and general guardians for incompetent

- persons and for minors who need guardians;
- (2) to specify the powers and duties of such guardians;
- (3) to provide for the protection of the person and conservation of the estate of the ward through periodic accountings and reports; and
- (4) to provide for the termination of guardianships.

" § 35A-1202. *Definitions.*--When used in this Subchapter, unless a contrary intent is indicated or the context requires otherwise:

(1) The term 'accounting' refers to the financial or status reports filed with the clerk, designated agency, respondent, or other person or party with whom such reports are required to be filed.

(2) The term 'clerk' means the clerk of superior court.

(3) The term 'designated agency' means the State or local human resources agency designated by the clerk in his order to prepare, cause to be prepared, or assemble a multidisciplinary evaluation and to perform other functions as the clerk may order. A designated agency includes, without limitation, State, local, regional or area mental health, mental retardation, vocational rehabilitation, public health, social service, and developmental disabilities agencies, and diagnostic evaluation centers.

(4) The term 'disinterested public agent' means:

- a. the director or assistant directors of a local human resources agency, or
- b. an adult officer, agent, or employee of a State human resources agency.

The fact that a disinterested public agent is employed by a State or local human resources agency that provides financial assistance, services, or treatment to a ward does not disqualify that person from being appointed as guardian.

(5) The term 'estate' means any interest in real property, choses in action, intangible personal property, and tangible personal property, and includes any interest in joint accounts or jointly held property.

(6) The term 'financial report' means the report filed by the guardian concerning all financial transactions, including receipts and expenditures of the ward's money, sale of the ward's property, or other transactions involving the ward's property.

(7) The term 'general guardian' means a guardian of both the estate and the person.

(8) The term 'guardian *ad litem*' means a guardian appointed pursuant to G.S. 1A-1, Rule 17, Rules of Civil Procedure.

(9) The term 'guardian of the estate' means a guardian appointed solely for the purpose of managing the property, estate, and business affairs of a ward.

(10) The term 'guardian of the person' means a guardian appointed solely for the purpose of performing duties relating to the care, custody, and control of a ward.

(11) The term 'incompetent person' means a person who has been adjudicated to be an 'incompetent adult' or 'incompetent child' as defined in G.S. 35A-1101(7) or (8).

(12) The term 'minor' means a person who is under the age of 18, is not married, and has not been legally emancipated.

(13) The term 'multidisciplinary evaluation' means an evaluation that contains current medical, psychological, and social work evaluations as directed by the clerk and that may contain current evaluations by professionals in other disciplines, including without limitation education, vocational rehabilitation, occupational therapy, vocational therapy, psychiatry, speech-and-hearing, and communications disorders. The evaluation is current if made not more than one year from the date on which it is presented to or considered by the court. The evaluation shall set forth the nature and extent of the disability and recommend a guardianship plan and program.

(14) The term 'status report' means the report required by G.S. 35A-1242 to be filed by the general guardian or guardian of the person. A status report shall include a report of a recent medical and dental examination of the ward by one or more physicians or dentists, a report on the guardian's performance of his duties as set forth in this Chapter and in the clerk's order appointing the guardian, and a report on the ward's condition, needs, and development. The clerk may direct that the report contain other or different information. The report may also contain, without limitation, reports of mental health or mental retardation professionals, psychologists, social workers, persons *in loco parentis*, a member of a multidisciplinary evaluation team, a designated agency, a disinterested public agent or agency, a guardian *ad litem*, a guardian of the estate, an interim guardian, a successor guardian, an officer, official, employee or agent of the Department of Human Resources, or any other interested persons including, if applicable to the ward's situation, group home parents or supervisors, employers, members of the staff of a treatment facility, or foster parents.

(15) The term 'ward' means a person who has been adjudicated incompetent or an adult or minor for whom a guardian has been appointed by a court of competent jurisdiction.

" § 35A-1203. *Jurisdiction; authority of clerk.*--(a) Clerks of superior court in their respective counties have original jurisdiction for the appointment of guardians of the person, guardians of the estate, or general guardians for incompetent persons and of related proceedings brought or filed under this Subchapter. Clerks of superior court in their respective counties have original jurisdiction for the appointment of guardians of the estate for minors, for the appointment of guardians of the person or general guardians for minors who have no natural guardian, and of related proceedings brought or filed under this Subchapter.

(b) The clerk shall retain jurisdiction following appointment of a guardian in order to assure compliance with the clerk's orders and those of the superior court. The clerk shall have authority to remove a guardian for cause and shall appoint a successor guardian, following the criteria set forth in G.S. 35A-1213 or G.S. 35A-1224, after removal, death, or resignation of a guardian.

(c) The clerk shall have authority to determine disputes between guardians and to adjust the amount of the guardian's bond.

(d) Any party or any other interested person may petition the clerk to exercise the authority conferred on the clerk by this section.

(e) Where a guardian or trustee has been appointed for a ward under Chapter 33 or Chapter 35 of the General Statutes, the clerk, upon his own motion or the motion of that guardian or trustee or any other interested person, may designate that guardian or trustee or appoint another qualified person as guardian of the person, guardian of the estate, or general guardian of the ward under this Chapter; provided, the authority of a guardian or trustee properly appointed under Chapter 33 or Chapter 35 of the General Statutes to continue serving in that capacity is not dependent on such motion and designation.

" § 35A-1204. *Venue.*--(a) Venue for the appointment of a guardian for an incompetent person is in the county in which the person was adjudicated to be incompetent unless the clerk in that county has transferred the matter to a different county, in which case venue is in the county to which the matter has been transferred.

(b) Venue for the appointment of a guardian for a minor is in the county in which the minor resides or is domiciled.

(c) Venue for the appointment of an ancillary guardian for a nonresident of the State of North Carolina who is a minor or who has been adjudicated incompetent in another state, and who has a guardian of the estate or general guardian in the state of his residence, is in any county in which is located real estate in which the nonresident ward

has an ownership or other interest, or if the nonresident ward has no such interest in real estate, any county in which the nonresident owns or has an interest in personal property.

" § 35A-1205. *Transfer to different county.*--At any time before or after appointing a guardian for a minor or incompetent person the clerk may, on a motion filed in the cause or on the court's own motion, for good cause order that the matter be transferred to a different county. The transferring clerk shall enter a written order directing the transfer under such conditions as the clerk specifies. The clerk in the transferring county shall transfer all original papers, documents, and orders from the guardianship and the incompetency proceeding, if any, to the clerk of the transferee county, along with the order directing the transfer. The clerk in the transferee county shall docket and file the papers in the estates division as a basis for jurisdiction in all subsequent proceedings. The clerk in the transferring county shall close his file with a copy of the transfer order and any order adjudicating incompetence or appointing a guardian.

" § 35A-1206. *Letters of appointment.*--Whenever a guardian has been duly appointed and qualified under this Subchapter, the clerk shall issue to the guardian letters of appointment signed by the clerk and sealed with the clerk's seal of office. In all cases, the clerk shall specify in the order and letters of appointment whether the guardian is a guardian of the estate, a guardian of the person, or a general guardian.

" § 35A-1207. *Motions in the cause.*--(a) Any interested person may file a motion in the cause with the clerk in the county where a guardianship is docketed to request modification of the order appointing a guardian or guardians or consideration of any matter pertaining to the guardianship.

(b) The clerk shall treat all such requests, however labeled, as motions in the cause.

(c) A movant under this section shall obtain from the clerk a time, date, and place for a hearing on the motion, and shall serve the motion and notice of hearing on all other parties and such other persons as the clerk directs as provided by G.S. 1A-1, Rule 5 of the Rules of Civil Procedure, unless the clerk orders otherwise.

(d) If the clerk finds reasonable cause to believe that an emergency exists that threatens the physical well-being of the ward or constitutes a risk of substantial injury to the ward's estate, the clerk may enter an appropriate *ex parte* order to address the emergency pending disposition of the matter at the hearing.

"Article 5.

"Appointment of Guardian for Incompetent Person.

"§ 35A-1210. *Application before clerk.*--Any individual, corporation, or disinterested public agent may file an application for the appointment of a guardian for an incompetent person by filing the same with the clerk. The application may be joined with or filed subsequent to a petition for the adjudication of incompetence under Subchapter I of this Chapter. The application shall set forth, to the extent known and to the extent such information is not already a matter of record in the case:

(1) The name, age, address, and county of residence of the ward or respondent;

(2) The name, address, and county of residence of the applicant, his relationship if any to the respondent or ward, and his interest in the proceeding;

(3) The name, address, and county of residence of the respondent's next of kin and other persons known to have an interest in the proceeding;

(4) A general statement of the ward's or respondent's assets and liabilities with an estimate of the value of any property, including any income and receivables to which he is entitled; and

(5) Whether the applicant seeks the appointment of a guardian of the person, a guardian of the estate, or a general guardian, and whom the applicant recommends or seeks to have appointed as such guardian or guardians.

"§ 35A-1211. *Service of application, motions, and notices.*--(a) Application for appointment of a guardian and related motions and notices shall be served on the parties and on such other persons as the clerk shall direct.

(b) When the application for appointment of a guardian is joined with a petition for adjudication of incompetence, the application shall be served with and in the same manner as the petition for adjudication of incompetence. In all other cases, the applicant shall serve the application as provided by G.S. 1A-1, Rule 4 of the Rules of Civil Procedure unless the clerk directs otherwise. The sheriff shall make such service without demanding his fees in advance.

"§ 35A-1212. *Hearing before clerk on appointment of guardian.*--(a) The clerk shall make such inquiry and receive such evidence as the clerk deems necessary to determine:

- (1) the nature and extent of the needed guardianship;
- (2) the assets, liabilities, and needs of the ward; and
- (3) who, in the clerk's discretion, can most suitably serve as the guardian or guardians.

(b) If a current multidisciplinary evaluation is not available and the clerk determines that one is necessary, the clerk, on his own motion or the motion of any party, may order that such an evaluation be performed pursuant to G.S. 35A-1111. The provisions of that section shall apply to such an order for a multidisciplinary evaluation following an adjudication of incompetence.

(c) The clerk may require a report prepared by a designated agency to evaluate the suitability of a prospective guardian, to include a recommendation as to an appropriate party or parties to serve as guardian, or both, based on the nature and extent of the needed guardianship and the ward's assets, liabilities, and needs.

(d) If a designated agency has not been named pursuant to G.S. 35A-1111, the clerk may, at any time he finds that the best interest of the ward would be served thereby, name a designated agency.

"§ 35A-1213. *Qualifications of guardians.*--(a) The clerk may appoint as guardian an adult individual, a corporation, or a disinterested public agent. The applicant may submit to the clerk the name or names of potential guardians, and the clerk may consider the recommendations of the next of kin or other persons.

(b) An individual appointed as general guardian or guardian of the estate must be a resident of the State of North Carolina. A nonresident of the State of North Carolina, to be appointed as guardian of the person of a North Carolina resident, must indicate in writing his willingness to submit to the jurisdiction of the North Carolina courts in matters relating to the guardianship and must appoint a resident agent to accept service of process for the guardian in all actions or proceedings with respect to the guardianship. Such appointment must be approved by and filed with the clerk, and any agent so appointed must notify the clerk of any change in the agent's address or legal residence. The clerk may require a nonresident guardian to post a bond or other security for the faithful performance of the guardian's duties.

(c) A corporation may be appointed as guardian only if it is authorized by its charter to serve as a guardian or in similar fiduciary capacities.

(d) A disinterested public agent who is appointed by the clerk to serve as guardian is authorized and required to do so; provided, if at the time of the appointment or any time subsequent thereto the disinterested public agent believes that his role or the role of his agency in relation to the ward is such that his service as guardian would constitute a conflict of interest, or if he knows of any other reason that his service as guardian may not be in the ward's best interest, he shall bring such matter to the attention of the clerk and seek the appointment of a different guardian. A disinterested public

agent who is appointed as guardian shall serve in that capacity by virtue of his office or employment, which shall be identified in the clerk's order and in the letters of appointment. When the disinterested public agent's office or employment terminates, his successor in office or employment, or his immediate supervisor if there is no successor, shall succeed him as guardian without further proceedings unless the clerk orders otherwise.

(e) Notwithstanding any other provision of this section, an employee of a treatment facility, as defined in G.S. 35A-1101(16), may not serve as guardian for a ward who is an inpatient in or resident of the facility in which the employee works; provided, this subsection shall not apply to or affect the validity of any appointment of a guardian that occurred before the effective date of this Chapter.

" § 35A-1214. *Priorities for appointment.*--The clerk shall consider appointing a guardian according to the following order of priority: an individual; a corporation; or a disinterested public agent. No public agent shall be appointed guardian until diligent efforts have been made to find an appropriate individual or corporation to serve as guardian, but in every instance the clerk shall base the appointment of a guardian or guardians on the best interest of the ward.

" § 35A-1215. *Clerk's order; issuance of letters of appointment.*--(a) When appointing a guardian, the clerk shall enter an order setting forth:

- (1) The nature of the guardianship or guardianships to be created and the name of the person or entity appointed to fill each guardianship; and
- (2) The powers and duties of the guardian or guardians, which shall include, unless the clerk orders otherwise,
 - (i) with respect to a guardian of the person and general guardian, the powers and duties provided under G.S. 35A, Article 8, and
 - (ii) with respect to a guardian of the estate and general guardian, the powers and duties provided under G.S. 35A, Article 9 and Subchapter III; and
- (3) The identity of the designated agency if there is one.

(b) The clerk may order that the ward retain certain legal rights and privileges to which he was entitled before he was adjudged incompetent; provided, any such order shall include findings as to the nature and extent of the ward's incompetence as it relates to the ward's need for a guardian or guardians.

(c) The clerk shall issue the guardian or guardians letters of appointment as provided in G.S. 35A-1206.

"§ 35A-1216. *Rule-making power of Secretary of Human Resources.*--The Secretary of the Department of Human Resources shall issue rules and regulations for the implementation of the guardianship responsibilities of disinterested public agents. The rules and regulations shall provide, among other things, that disinterested public agents shall undertake or have received training concerning the powers and responsibilities of guardians.

"Article 6.

"Appointment of Guardian for a Minor.

"§ 35A-1220. *Absence of natural guardian.*--When a minor either has no natural guardian or has been abandoned, and the minor requires services from the county department of social services, the social services director in the county in which the minor resides or is domiciled shall be the guardian of the person of the minor until the appointment of a general guardian or guardian of the person for the minor under this Subchapter or the entry of an order by a court of competent jurisdiction awarding custody of the minor or appointing a general guardian or guardian of the person for the minor.

"§ 35A-1221. *Petition before clerk.*--Any person or corporation, including any State or local human resources agency through its authorized representative, may make application for the appointment of a guardian of the estate for any minor or for the appointment of a guardian of the person or general guardian for any minor who has no natural guardian by filing an application with the clerk. The application shall set forth, to the extent known:

(1) The minor's name, date of birth, address, and county of residence;

(2) The names and addresses of the minor's parents, if living, and of other persons known to have an interest in the application for appointment of a guardian; the name and date of death of the minor's deceased parent or parents;

(3) The applicant's name, address, county of residence, relationship if any to the minor, and interest in the proceeding;

(4) If a guardian has been appointed for the minor or custody of the minor has been awarded, a statement of the facts relating thereto and a copy of any guardianship or custody order, if available;

(5) A general statement of the minor's assets and liabilities with an estimate of the value of any property, including any income and receivables to which he is entitled;

(6) A statement of the reason or reasons that the appointment of a guardian is sought; whether the applicant seeks the appointment of a guardian of the person, a guardian of the estate, or a general guardian; and whom the applicant recommends or seeks to have appointed as such guardian or guardians; and

(7) Any other information that will assist the clerk in determining the need for a guardian or in appointing a guardian.

" § 35A-1222. *Service of application and notices.*--A copy of the application and written notice of the time, date, and place set for a hearing shall be served on any parent, guardian, or legal custodian of the minor who is not an applicant, and on any other person the clerk may direct, including the minor. When service is made by the sheriff, the sheriff shall make such service without demanding his fees in advance. Parties may waive their right to notice of the hearing and the clerk may proceed to consider the application upon determining that all necessary parties are before the court and agree to have the application considered.

" § 35A-1223. *Hearing before clerk on appointment of guardian.*--The clerk shall receive evidence necessary to determine whether a guardian of the person, a guardian of the estate, or a general guardian is required. If the court determines that a guardian or guardians are required, the court shall receive evidence necessary to determine the minor's assets, liabilities, and needs, and who the guardian or guardians shall be. The hearing may be informal and the clerk may consider whatever testimony, written reports, affidavits, documents, or other evidence the clerk finds necessary to determine the minor's best interest.

" § 35A-1224. *Criteria for appointment of guardians.*--(a) The clerk may appoint a guardian of the estate for any minor. The clerk may appoint a guardian of the person or a general guardian only for a minor who has no natural guardian.

(b) The clerk may appoint as guardian of the person or general guardian only an adult individual who is a resident of the State of North Carolina.

(c) The clerk may appoint as guardian of the estate an adult individual who is a resident of the State of North Carolina or a corporation that is authorized by its charter to serve as a guardian or in similar fiduciary capacities.

(d) If the minor's parent or parents have made a testamentary recommendation pursuant to G.S. 35A-1225 for the appointment of a guardian, the clerk shall give substantial weight to such recommendation; provided, such recommendation may not affect the rights of a surviving parent who has not willfully abandoned the minor, and the clerk shall in every instance base the appointment of a

guardian or guardians on the minor's best interest.

(e) Notwithstanding any other provision of this section, an employee of a treatment facility, as defined in G.S. 35A-1101(16), may not serve as guardian for a ward who is an inpatient in or resident of the facility in which the employee works; provided, this subsection shall not apply to or affect the validity of any appointment of a guardian that occurred before the effective date of this Chapter.

"§ 35A-1225. *Testamentary recommendation; guardian for incompetent minor.*--(a) Parents are presumed to know the best interest of their children. Any parent may by last will and testament recommend a guardian for any of his or her minor children, whether born at the parent's death or *en ventre sa mere*, for such time as the child remains under 18 years of age, unmarried, and unemancipated, or for any less time. Such will may be made without regard to whether the testator is an adult or a minor. If both parents make such recommendations, the will with the latest date shall, in the absence of other relevant factors, prevail. In the absence of a surviving parent, such recommendation shall be a strong guide for the clerk in appointing a guardian, but the clerk is not bound by the recommendation if the clerk finds that a different appointment is in the minor's best interest. If the will specifically so directs, a guardian appointed pursuant to such recommendation may be permitted to qualify and serve without giving bond, unless the clerk finds as a fact that the interest of the minor would be best served by requiring the guardian to give bond.

(b) Any person authorized by law to recommend a guardian for a minor by his last will and testament or other writing may direct that the guardian appointed for his incompetent child shall petition the clerk during the six months before the child reaches majority for an adjudication of incompetence and appointment of a guardian under the provisions of this Chapter. If so directed, the guardian shall timely file such a petition unless the minor is no longer incompetent. Notwithstanding the absence of such provision in a will or other writing, the guardian of an incompetent child, or any other person, may file such petition during the six months before the minor reaches majority or thereafter.

"§ 35A-1226. *Clerk's order; issuance of letters of appointment.*--After considering the evidence, the clerk shall enter an appropriate order. If the clerk determines that a guardian or guardians should be appointed, the order may set forth:

(1) Findings as to the minor's circumstances, assets, and liabilities as they relate to his need for a guardian or guardians; and

(2) Whether there shall be one or more guardians, his or their identity, and if more than one, who shall be guardian of the person and who shall be guardian of the estate. The clerk shall issue the guardian or guardians letters of appointment as provided in G.S. 35A-1206.

"§ 35A-1227. *Funds owed to minors.*--(a) Certain insurance proceeds or other funds to which a minor is entitled may be paid to and administered by the public guardian or the clerk as provided in G.S. 7A-111.

(b) A devise or legacy of personal property to a minor may be distributed to the minor's parent or guardian with the approval of the clerk as provided in G.S. 28A-22-7.

(c) A personal representative or collector who holds property due a minor without a guardian may deliver the property to the clerk as provided in G.S. 28A-23-2.

(d) *Inter vivos* or testamentary gifts to minors may be made and administered according to the North Carolina Uniform Gifts to Minors Act, Chapter 33 of the General Statutes.

"§ 35A-1228. *Guardians of children of servicemen; allotments and allowances.*--In all cases where a person serving in the armed forces of the United States has made an allotment or allowance to a resident of this State who is his child or other minor dependent as provided by the Wartime Allowances to Service Men's Dependents Act or any other act of Congress, the clerk in the county of the minor's residence may act as temporary guardian, or appoint some suitable person to act as temporary guardian, of the person's minor dependent for purposes of receiving and disbursing allotments and allowance funds for the benefit of the minor dependent, when:

(1) The other parent of the child or other minor dependent, or other person designated in the allowance or allotment to receive and disburse such moneys for the benefit of the minor dependent, dies or becomes mentally incompetent; and

(2) The person serving in the armed forces of the United States is reported as missing in action or as a prisoner of war and is unable to designate another person to receive and disburse the allotment or allowance to the minor dependent.

"Article 7.

"Guardian's Bond.

"§ 35A-1230. *Bond required before receiving property.*--Except as otherwise provided by G.S. 35A-1225(a), no general guardian or guardian of the estate shall be permitted to receive the ward's property

until he has given sufficient surety, approved by the clerk, to account for and apply the same under the direction of the court. The clerk shall not require a guardian of the person to post a bond, except as provided in G.S. 35A-1213(b) for nonresident guardians.

" § 35A-1231. *Terms and conditions of bond; increase on sale of realty.*--(a) Before issuing letters of appointment to a general guardian or guardian of the estate the clerk shall require the guardian to give a bond payable to the State. The clerk shall determine the value of all the ward's personal property and the rents and profits of the ward's real estate by examining, under oath, the applicant for guardianship or any other person or persons. The penalty in the bond shall be set as follows:

- (1) Where the bond is executed by personal sureties, the penalty must be at least double the value so determined by the clerk;
- (2) Where the bond is executed by a duly authorized surety company, the penalty may be fixed at not less than one and one-fourth times the value so determined by the clerk;
- (3) Provided, however, the clerk may accept bond in estates where the value determined by the clerk exceeds the sum of one hundred thousand dollars (\$100,000), in a sum equal to one hundred and ten percent (110%) of the determined value.

The bond must be secured with two or more sufficient sureties, jointly and severally bound, and must be acknowledged before and approved by the clerk. The bond must be conditioned on the guardian's faithfully executing the trust reposed in him as such and obeying all lawful orders of the clerk or judge relating to the guardianship of the estate committed to him. The bond must be recorded in the office of the clerk appointing the guardian, except, if the guardianship is transferred to a different county, it must be recorded in the office of the clerk in the county where the guardianship is docketed.

(b) If, on application of the guardian, the clerk or judge orders a sale of the ward's property for any of the causes prescribed by law, before the sale is confirmed, the guardian shall be required to file a bond as now required in double the amount of the real property sold, except where the bond is executed by a duly authorized surety company, in which case the penalty of the bond need not exceed one and one-fourth times the amount of the real property sold.

" § 35A-1232. *Exclusion of deposited money in computing amount of bond.*--(a) When it appears that the ward's estate includes money that has been or will be deposited in a bank in this State or invested in an account in an insured savings and loan association upon condition that the money or securities will not be withdrawn except on authorization of the court, the court may, in its discretion, order that the money be so deposited or invested and exclude such deposited money from the computation of the amount of the bond or reduce the amount of the bond in respect of such money to such an amount as it may deem reasonable.

(b) The applicant for letters of guardianship may deliver to any such bank or association any such money in his possession or may allow such bank or association to retain any such money already deposited or invested with it; in either event, the applicant shall secure and file with the court a written receipt including the agreement of the bank or association, duly acknowledged by an authorized officer of the bank or association, that the money shall not be allowed to be withdrawn except on authorization of the court. In so receiving and retaining such money, the bank or association shall be protected to the same extent as though it had received the same from a person to whom letters of guardianship had been issued.

(c) The term 'account in an insured savings and loan association' as used in this section means any account in a savings and loan association that is insured by the Federal Deposit Insurance Corporation, by the Federal Savings and Loan Insurance Corporation, or by a mutual deposit guaranty association authorized by Article 7A of Chapter 54 of the North Carolina General Statutes.

(d) The term 'money' as used in this section means the principal of the ward's estate and does not include the income earned by the principal which may be withdrawn without any authorization of the court.

" § 35A-1233. *Clerk's authority to reduce penalty of bond.*--When a guardian has disbursed either income or income and principal of the estate according to law, for the purchase of real estate or the support and maintenance of the ward or the ward and his dependents or any lawful cause, and when the personal assets and income of the estate from all sources in the hands of the guardian have been diminished, the penalty of the guardian's bond may be reduced in the discretion of the clerk to an amount not less than the amount that would be required if the guardian were first qualifying to administer the personal assets and income.

" § 35A-1234. *Action on bond.*--Any person injured by a breach of the condition of the guardian's bond may prosecute a suit thereon, as in other actions.

" § 35A-1235. *One bond sufficient when several wards have estate in common.*--When the same person is appointed guardian for two or more minors or incompetent persons possessed of one estate in common, the clerk may take one bond only in such case, upon which each of the wards or their heirs or personal representatives may have a separate action.

" § 35A-1236. *Renewal of bond.*--Every guardian who is required to post a bond and who does so other than through a duly authorized surety company shall renew his bond before the clerk every three years during the continuance of the guardianship. The clerk shall issue a citation against every such guardian failing to renew his bond, requiring the guardian to renew the bond within 20 days after service of the citation. On return of the citation duly served and failure of the guardian to comply, the clerk shall remove the guardian and appoint a successor. This section shall not apply to a guardian whose bond is executed by a duly authorized surety company.

" § 35A-1237. *Relief of endangered sureties.*--Any surety of a guardian, who is in danger of sustaining loss by his suretyship, may file a complaint before the clerk where the guardianship is docketed, setting forth the circumstances of his case and demanding relief. The guardian shall be required to answer the complaint within 20 days after service of the summons. If, upon the hearing, the clerk deems the surety entitled to relief, the clerk may order the guardian to give a new bond or to indemnify the surety against apprehended loss, or may remove the guardian from his trust. If the guardian fails to give a new bond or security to indemnify within a reasonable time when required to do so, the clerk must enter a peremptory order for his removal, and his authority as guardian shall cease.

" § 35A-1238. *Clerk's liability.*--(a) If any clerk commits the estate of a ward to the guardianship of any person without taking good and sufficient bond for the same as required by law, the clerk shall be liable on his official bond, at the suit of the aggrieved party, for all loss and damages sustained for want of sufficient bond being taken; but if the sureties were good at the time of their being accepted, the clerk shall not be liable.

(b) If any clerk willfully or negligently does, or omits to do, any other act prohibited, or other duty imposed on him by law, by which act or omission the estate of any ward suffers damage, the clerk shall be liable on his official bond, at the suit of the aggrieved party, for all loss and damages sustained from such act or omission.

" § 35A-1239. *Human Resources bond.*--The Secretary of the Department of Human Resources shall require, or purchase, in such amounts as he deems adequate and proper, individual or blanket bonds for all disinterested public agents appointed to be guardians, whether they serve as guardians of the estate, guardians of the person, or general guardians, or one blanket bond covering all such agents, such bond or bonds to be conditioned upon faithful performance of their duties as guardians and made payable to the State. The premiums shall be paid by the State.

"Article 8.

"Powers and Duties of Guardian of the Person.

" § 35A-1240. *Applicability of Article.*--This Article applies only to guardians of the person, including general guardians exercising authority as guardian of the person.

" § 35A-1241. *Powers and duties of guardian of the person.*--(a) To the extent that it is not inconsistent with the terms of any order of the clerk or any other court of competent jurisdiction, a guardian of the person has the following powers and duties:

- (1) The guardian of the person is entitled to custody of the person of his ward and shall make provision for his ward's care, comfort, and maintenance, and shall, as appropriate to the ward's needs, arrange for his training, education, employment, rehabilitation or habilitation. The guardian of the person shall take reasonable care of the ward's clothing, furniture, vehicles, and other personal effects that are with the ward.
- (2) The guardian of the person may establish the ward's place of abode within or without this State. In arranging for a place of abode, the guardian of the person shall give preference to places within this State over places not in this State if in-State and out-of-State places are substantially equivalent. He also shall give preference to places that are not treatment facilities. If the only available and appropriate places of domicile are treatment facilities, he shall give preference to community-based treatment facilities, such as group homes or nursing homes, over treatment facilities that are not community-based.
- (3) The guardian of the person may give any consent or approval that may be necessary to enable the ward to receive medical, legal, psychological, or other professional care, counsel, treatment, or service. He may not, however, consent to the sterilization of a

mentally ill or mentally retarded ward. Such sterilization may be performed only after compliance with Chapter 35, Article 7. The guardian of the person may give any other consent or approval on the ward's behalf that may be required or in the ward's best interest. He may petition the clerk for the clerk's concurrence in the consent or approval.

(b) A guardian of the person is entitled to be reimbursed out of the ward's estate for reasonable and proper expenditures incurred in the performance of his duties as guardian of the ward's person.

(c) A guardian of the person, if he has acted within the limits imposed on him by this Article or the order of appointment or both, shall not be liable for damages to the ward or the ward's estate, merely by reason of the guardian's:

- (1) authorizing or giving any consent or approval necessary to enable the ward to receive legal, psychological, or other professional care, counsel, treatment, or service, in a situation where the damages result from the negligence or other acts of a third person; or
- (2) authorizing medical treatment or surgery for his ward, if the guardian acted in good faith and was not negligent.

" § 35A-1242. *Status reports for incompetent wards.*--(a) Any corporation or disinterested public agent that is guardian of the person for an incompetent person, within six months after being appointed, shall file an initial status report with the designated agency, if there is one, or with the clerk. Such guardian shall file a second status report with the designated agency or the clerk one year after being appointed, and subsequent reports annually thereafter. The clerk may order any other guardian of the person to file status reports. If a guardian required by this section to file a status report is employed by the designated agency, the guardian shall file any required status report with both the designated agency and the clerk.

(b) Each status report shall be filed under the guardian's oath or affirmation that the report is complete and accurate so far as he is informed and can determine.

(c) A clerk or designated agency that receives a status report shall not make the status report available to anyone other than the guardian, the ward, the court, or State or local human resource agencies providing services to the ward.

" § 35A-1243. *Duties of designated agency.*--(a) Within 30 days after it receives a status report, the designated agency shall certify to the clerk that it has reviewed the report and shall mail a copy of its

certification to the guardian.

(b) At the same time, the designated agency may:

- (1) Send its written comments on the report to the clerk, the guardian, or any other person who may have an interest in the ward's welfare;
- (2) Notify the guardian that it is able to help the guardian in the performance of his duties;
- (3) Petition the clerk for an order requiring the guardian to perform the duties imposed on him by the clerk or this Article if it appears that the guardian is not performing those duties;
- (4) Petition the clerk for an order modifying the terms of the guardianship or the guardianship program or plan if it appears that such should be modified;
- (5) Petition the clerk for an order removing the guardian from his duties and appointing a successor guardian if it appears that the guardian should be removed for cause;
- (6) Petition the clerk for an adjudication of restoration to competency; or
- (7) Petition the clerk for any other appropriate orders.

(c) If the designated agency files such a petition, it shall cause the petition to be signed and acknowledged by the officer, official, employee, or agent who has personal knowledge of the facts set forth in the petition, and it shall set forth all facts known to it that tend to support the relief sought by the petition.

(d) The clerk shall take appropriate action upon the petition in accordance with other provisions or requirements of this Chapter.

" § 35A-1244. *Procedure to compel status reports.*--If a guardian of the person fails to file a status report as required, or renders an unsatisfactory report, the clerk shall, on his own motion or the request of an interested party, promptly order the guardian to render a full and satisfactory report within 20 days after service of the order. If, after due service of the order, the guardian does not file such report, or obtain further time in which to file it, on or before the return day of the order, the clerk may remove him from office or may issue an order or notice to show cause for civil or criminal contempt as provided in Chapter 5A of the General Statutes. In such proceedings, the defaulting guardian may be held personally liable for the costs of the proceeding, including the costs of service of all notices or motions incidental thereto, or the amount of the costs of the proceeding may be deducted from any commissions due to the guardian of the person. Where a corporation or disinterested public agent is guardian of the

person, the president or director or person or persons having charge of the guardianship for the corporation or agency, or the person to whom the duty of making status reports has been assigned by the corporation or agency, may be proceeded against as herein provided as if he or they were the guardian personally, provided, the corporation or agency itself may also be fined and/or removed as guardian for such failure or omission.

"Article 9.

"Powers and Duties of Guardian of the Estate.

"§ 35A-1250. *Applicability of Article.*--(a) This Article applies only to guardians of the estate, including general guardians exercising authority as guardian of the estate. A guardian of the estate or general guardian shall have all the powers and duties under this Article unless those are inconsistent with the clerk's order appointing a guardian, in which case the clerk's order shall prevail.

(b) Nothing contained in this Article shall be construed as authorizing any departure from the express terms or limitations set forth in any court order creating or limiting the guardian's powers and duties.

"§ 35A-1251. *Guardian's powers in administering incompetent ward's estate.*--In the case of an incompetent ward, a general guardian or guardian of the estate has the power to perform in a reasonable and prudent manner every act that a reasonable and prudent person would perform incident to the collection, preservation, management, and use of the ward's estate to accomplish the desired result of administering the ward's estate legally and in the ward's best interest, including but not limited to the following specific powers:

(1) To take possession, for the ward's use, of all the ward's estate, as defined in G.S. 35A-1202(5).

(2) To receive assets due the ward from any source.

(3) To maintain any appropriate action or proceeding to recover possession of any of the ward's property, to determine the title thereto, or to recover damages for any injury done to any of the ward's property; also, to compromise, adjust, arbitrate, sue on or defend, abandon, or otherwise deal with and settle any other claims in favor of or against the ward.

(4) To complete performance of contracts entered into by the ward that continue as obligations of the ward or his estate, or to refuse to complete such contracts, as the guardian determines to be in the ward's best interests, taking into account any cause of action that

might be maintained against the ward for failure to complete such contract.

(5) To abandon or relinquish all rights in any property when, in the guardian's opinion, acting reasonably and in good faith, it is valueless, or is so encumbered or is otherwise in such condition that it is of no benefit or value to the ward or his estate.

(6) To vote shares of stock or other securities in person or by general or limited proxy, and to pay sums chargeable or accruing against or on account of securities owned by the ward.

(7) To insure the ward's assets against damage or loss, at the expense of the ward's estate.

(8) To pay the ward's debts and obligations that were incurred prior to the date of adjudication of incompetence or appointment of a guardian when the debt or obligation was incurred for necessary living expenses or taxes; or when the debt or obligation involves a specific lien on real or personal property, if the ward has an equity in the property on which there is a specific lien; or when the guardian is convinced that payment of the debt or obligation is in the best interest of the ward or his estate.

(9) To renew the ward's obligations for the payment of money. The guardian's execution of any obligation for the payment of money pursuant to this subsection shall not be held or construed to be binding on the guardian personally.

(10) To pay taxes, assessments, and other expenses incident to the collection, care, administration, and protection of the ward's estate.

(11) To sell or exercise stock subscription or conversion rights; consent, directly or through a committee or other agent, to the reorganization, consolidation, merger, dissolution, or liquidation of a corporation or other business enterprise.

(12) To expend estate income on the ward's behalf and to petition the court for prior approval of expenditures from estate principal.

(13) To pay from the ward's estate necessary expenses of administering the ward's estate.

(14) To employ persons, including attorneys, auditors, investment advisors, appraisers, or agents to advise or assist him in the performance of his duties as guardian.

(15) To continue any business or venture or farming operation in which the ward was engaged, where such continuation is reasonably necessary or desirable to preserve the value, including goodwill, of the ward's interest in such business.

(16) To acquire and retain every kind of property and every kind of investment, including specifically, but without in any way limiting the generality of the foregoing, bonds, debentures, and other corporate or

governmental obligations; stocks, preferred or common; real estate mortgages; shares in building and loan associations or savings and loan associations; annual premium or single premium life, endowment, or annuity contracts; and securities of any management type investment company or investment trust registered under the Federal Investment Company Act of 1940, as from time to time amended.

(17) To lease the ward's lands for a term of not more than three years.

(18) To foreclose, as an incident to the collection of any bond, note or other obligation, any mortgage, deed of trust, or other lien securing such bond, note or other obligation, and to bid in the property at such foreclosure sale, or to acquire the property by deed from the mortgagor or obligor without foreclosure; and to retain the property so bid in or taken over without foreclosure.

(19) To borrow money for such periods of time and upon such terms and conditions as to rates, maturities, renewals, and security as the guardian shall deem advisable, including the power of a corporate guardian to borrow from its own banking department, for the purpose of paying debts, taxes, and other claims against the ward, and to mortgage, pledge, or otherwise encumber such portion of the ward's estate as may be required to secure such loan or loans; provided, in respect to the borrowing of money on the security of the ward's real property, Subchapter III of this Chapter is controlling.

(20) To execute and deliver all instruments that will accomplish or facilitate the exercise of the powers vested in the guardian.

" § 35A-1252. *Guardian's powers in administering minor ward's estate.*--In the case of a minor ward, a general guardian or guardian of the estate has the power to perform in a reasonable and prudent manner every act that a reasonable and prudent person would perform incident to the collection, preservation, management, and use of the ward's estate to accomplish the desired result of administering the ward's estate legally and in the ward's best interest, including but not limited to the following specific powers:

(1) To take possession, for the ward's use, of all the ward's estate, as defined in G.S. 35A-1202(5).

(2) To receive assets due the ward from any source.

(3) To maintain any appropriate action or proceeding to obtain support to which the ward is legally entitled, to recover possession of any of the ward's property, to determine the title thereto, or to recover damages for any injury done to any of the ward's property; also, to compromise, adjust, arbitrate, sue on or defend, abandon, or

otherwise deal with and settle any other claims in favor of or against the ward.

(4) To abandon or relinquish all rights in any property when, in the guardian's opinion, acting reasonably and in good faith, it is valueless, or is so encumbered or is otherwise in such condition that it is of no benefit or value to the ward or his estate.

(5) To vote shares of stock or other securities in person or by general or limited proxy, and to pay sums chargeable or accruing against or on account of securities owned by the ward.

(6) To insure the ward's assets against damage or loss, at the expense of the ward's estate.

(7) To pay taxes, assessments, and other expenses incident to the collection, care, administration, and protection of the ward's estate.

(8) To sell or exercise stock subscription or conversion rights; consent, directly or through a committee or other agent, to the reorganization, consolidation, merger, dissolution, or liquidation of a corporation or other business enterprise.

(9) To expend estate income on the ward's behalf and to petition the court for prior approval of expenditures from estate principal; provided, neither the existence of the estate nor the guardian's authority to make expenditures therefrom shall be construed as affecting the legal duty that a parent or other person may have to support and provide for the ward.

(10) To pay from the ward's estate necessary expenses of administering the ward's estate.

(11) To employ persons, including attorneys, auditors, investment advisors, appraisers, or agents to advise or assist him in the performance of his duties as guardian.

(12) To continue any business or venture or farming operation in which the ward was engaged, where such continuation is reasonably necessary or desirable to preserve the value, including goodwill, of the ward's interest in such business.

(13) To acquire and retain every kind of property and every kind of investment, including specifically, but without in any way limiting the generality of the foregoing bonds, debentures, and other corporate or governmental obligations; stocks, preferred or common; real estate mortgages; shares in building and loan associations or savings and loan associations; annual premium or single premium life, endowment, or annuity contracts; and securities of any management type investment company or investment trust registered under the Federal Investment Company Act of 1940, as from time to time amended.

(14) To lease the ward's lands for a term of not more than three years.

(15) To foreclose, as an incident to the collection of any bond, note or other obligation, any mortgage, deed of trust, or other lien securing such bond, note or other obligation, and to bid in the property at such foreclosure sale, or to acquire the property by deed from the mortgagor or obligor without foreclosure; and to retain the property so bid in or taken over without foreclosure.

(16) To borrow money for such periods of time and upon such terms and conditions as to rates, maturities, renewals, and security as the guardian shall deem advisable, including the power of a corporate guardian to borrow from its own banking department, for the purpose of paying debts, taxes, and other claims against the ward, and to mortgage, pledge, or otherwise encumber such portion of the ward's estate as may be required to secure such loan or loans; provided, in respect to the borrowing of money on the security of the ward's real property, Subchapter III of this Chapter is controlling.

(17) To execute and deliver all instruments that will accomplish or facilitate the exercise of the powers vested in the guardian.

" § 35A-1253. *Specific duties of guardian of estate.*--In addition to any other duties imposed by law or by order of the clerk, a general guardian or guardian of the estate shall have the following specific duties:

(1) To take possession, for the ward's use, of all his estate.

(2) To diligently endeavor to collect, by all lawful means, all bonds, notes, obligations, or moneys due his ward.

(3) To pay income taxes, property taxes, or other taxes or assessments owed by the ward, out of the ward's estate, as required by law. If any guardian allows his ward's lands to be sold for nonpayment of taxes or assessments, he shall be liable to his ward for the full value thereof.

(4) To observe the standard of judgment and care under the circumstances then prevailing that an ordinarily prudent person of discretion and intelligence, who is a fiduciary of the property of others, would observe as such fiduciary in acquiring, investing, reinvesting, exchanging, retaining, selling, and managing the ward's property. If the guardian has special skills or is named as guardian on the basis of representations of special skills or expertise, to use those skills.

(5) To obey all lawful orders of the court pertaining to the guardianship and to comply with the accounting requirements of this Subchapter.

Nothing in this section shall be construed as broadening the powers granted in G.S. 35A-1251 or G.S. 35A-1252.

"Article 10.

"Returns and Accounting.

"§ 35A-1260. *Applicability.*--This Article applies only to general guardians and guardians of the estate.

"§ 35A-1261. *Return within three months.*--Every guardian, within three months after his appointment, shall exhibit to the clerk an account, upon oath, of the estate of his ward; but the clerk may extend such time not exceeding six months, for good cause shown.

"§ 35A-1262. *Procedure to compel return.*--In cases of default to exhibit the return required by G.S. 35A-1261, the clerk must issue an order requiring the guardian to file such return forthwith, or to show cause why an attachment should not issue against him. If after due service of the order, the guardian does not, on the return day of the order, file such return, or obtain further time to file the same, the clerk shall issue an attachment against him, and commit him to the common jail of the county until he files such return.

"§ 35A-1263. *Additional assets to be returned.*--Whenever further property of any kind, not included in any previous return, comes to the hands or knowledge of any guardian, he must cause the same to be returned within three months after the possession or discovery thereof; and the making of such return of new assets, from time to time, may be enforced in the same manner as prescribed in G.S. 35A-1262.

"§ 35A-1264. *Annual accounts.*--Every guardian shall, within 30 days after the expiration of one year from the date of his qualification or appointment, and annually, so long as any of the estate remains in his control, file in the office of the clerk an inventory and account, under oath, of the amount of property received by him, or invested by him, and the manner and nature of such investment, and his receipts and disbursements for the past year in the form of debit and credit. The guardian shall produce vouchers for all payments or verified proof for all payments in lieu of vouchers. The clerk may examine on oath such accounting party, or any other person, concerning the receipts, disbursements or any other matter relating to the estate; and having carefully revised and audited such account, if he approve the same, he must endorse his approval thereon, which shall be deemed *prima facie* evidence of correctness.

"§ 35A-1265. *Procedure to compel accounting.*--(a) If any guardian omits to account, as directed in G.S. 35A-1264, or renders an

insufficient and unsatisfactory account, the clerk shall forthwith order such guardian to render a full and satisfactory account, as required by law, within 20 days after service of the order. Upon return of the order, duly served, if the guardian fails to appear or refuses to exhibit such account, the clerk may issue an attachment against him for contempt and commit him until he exhibits such account, and may likewise remove him from office. In all proceedings hereunder the defaulting guardian will be liable personally for the costs of the said proceedings, including the costs of service of all notices or writs incidental to, or thereby acquiring, or the amount of the costs of such proceeding may be deducted from any commissions which may be found due said guardian on settlement of the estate.

(b) Where a corporation is guardian, the president, cashier, trust officer or the person or persons having charge of the particular estate for the corporation, or the person to whom the duty of making reports of said estate has been assigned by the officers or directors of the corporation, may be proceeded against and committed to jail as herein provided as if he or they were the guardian or guardians personally: Provided, it is found as a fact that the failure or omission to file such account or to obey the order of the court in reference thereto is willful on the part of the officer charged therewith: Provided further, the corporation itself may be fined and/or removed as such guardian for such failure or omission.

" § 35A-1266. *Final account.*--A guardian may be required to file a final account at any time after 60 days from the ward's coming of full age or the cessation of the guardianship; but such account may be filed voluntarily at any time, and, whether the accounting be voluntary or compulsory, it shall be audited and recorded by the clerk.

" § 35A-1267. *Expenses and disbursements credited to guardian.*--Every guardian may charge in his annual account all reasonable disbursements and expenses; and if it appear that he has really and bona fide disbursed more in one year than the profits of the ward's estate, for his education and maintenance, the guardian shall be allowed and paid for the same out of the profits of the estate in any other year; but such disbursements must, in all cases, be suitable to the degree and circumstances of the estate of the ward.

" § 35A-1268. *Guardian to exhibit investments and bank statements.*--At the time the accounts required by this Article and other provisions of law are filed, the clerk shall require the guardian to exhibit to the court all investments and bank statements showing cash balance, and

the clerk shall certify on the original account that an examination was made of all investments and the cash balance, and that the same are correctly stated in the account: Provided, such examination may be made by the clerk in the county in which such guardian resides or the county in which such securities are located and, when the guardian is a duly authorized bank or trust company, such examination may be made by the clerk in the county in which such bank or trust company has its principal office or in which such securities are located; the certificate of the clerk of such county shall be accepted by the clerk of any county in which such guardian is required to file an account; provided that banks organized under the laws of North Carolina or the acts of Congress, engaged in doing a trust and fiduciary business in this State, when acting as guardian or in other fiduciary capacity, shall be exempt from the requirements of this section, when a certificate executed by a trust examiner employed by a governmental unit, by a bank's internal auditors who are responsible only to the bank's board of directors or by an independent certified public accountant who is responsible only to the bank's board of directors is exhibited to the clerk and when said certificate shows that the securities have been examined within one year and that the securities were held at the time of the examination by the fiduciary or by a clearing corporation for the fiduciary and that the person making such certification has no reason to believe said securities are not still so held. Nothing herein contained shall be construed to abridge the inherent right of the clerk to require the production of securities, should he desire to do so.

"§ 35A-1269. *Commissions.*--The superior court shall allow commissions to the guardian for his time and trouble in the management of the ward's estate, in the same manner and under the same rules and restrictions as allowances are made to executors, administrators and collectors under the provisions of G.S. 28A-23-3.

"Article 11.

"Public Guardians.

"§ 35A-1270. *Appointment; term; oath.*--There may be in every county a public guardian, to be appointed by the clerk for a term of eight years. The public guardian shall take and subscribe an oath or affirmation faithfully and honestly to discharge the duties imposed upon him; the oath or affirmation so taken and subscribed shall be filed in the office of the clerk.

"§ 35A-1271. *Bond of public guardian; increasing bond.*--The public guardian shall enter into bond with three or more sureties, approved by the clerk in the penal sum of six thousand dollars (\$6,000),

payable to the State of North Carolina, conditioned faithfully to perform the duties of his office and obey all lawful orders of the superior or other courts touching said guardianship of all wards, money or estate that may come into his hands. Whenever the aggregate value of the real and personal estate belonging to his several wards exceeds one-half the bond herein required the clerk shall require him to enlarge his bond in amount so as to cover at least double the aggregate amount under his control as guardian.

"§ 35A-1272. *Powers, duties, liabilities, compensation.*--The powers and duties of said public guardian shall be the same as other guardians, and he shall be subject to the same liabilities as other guardians under the existing laws, and shall receive the same compensation as other guardians.

"§ 35A-1273. *When letters issue to public guardian.*--The public guardian shall apply for and obtain letters of guardianship in the following cases:

(1) When a period of six months has elapsed from the discovery of any property belonging to any minor or incompetent person without guardian.

(2) When any person entitled to letters of guardianship shall request in writing the clerk to issue letters to the public guardian; but it is lawful and the duty of the clerk to revoke said letters of guardianship at any time after issuing the same upon application in writing by any person entitled to qualify as guardian, setting forth a sufficient cause for such revocation.

"Article 12.

"Nonresident Ward Having Property in State.

"§ 35A-1280. *Appointment of ancillary guardian.*--(a) A clerk may appoint an ancillary guardian whenever it appears by petition or application and due proof to the satisfaction of the clerk that:

- (1) There is in the county of the clerk's jurisdiction real or personal property in which a nonresident of the State of North Carolina has an ownership or other interest; and
- (2) The nonresident is incompetent or is a minor and a guardian of the estate or general guardian, or a comparable fiduciary, has been appointed and is still serving for the nonresident in the state of his or her residence; and
- (3) That the nonresident ward has no guardian in the State of North Carolina.

(b) Except as otherwise ordered by the clerk or provided herein, an ancillary guardian shall have all the powers, duties, and responsibilities with respect to the nonresident ward's estate in the State of North Carolina as guardians otherwise appointed have. An ancillary guardian shall annually make an accounting to the court in this State and remit to the guardian in the state of the ward's residence any net rents of the real estate or any proceeds of sale.

(c) A certified or exemplified copy of letters of appointment or other official record of a court of record appointing a guardian for a nonresident in the state of his residence shall be conclusive proof of the fact of the ward's minority or incompetence and of the appointment of the guardian in the state of the ward's residence; provided, that the letters of appointment or other record shall show that the guardianship is still in effect in the state of the ward's residence and that the ward's incompetence or minority still exists.

(d) Upon the appointment of an ancillary guardian under this Article, the clerk shall notify the appropriate court in the county of the ward's residence and the guardian in the state of the ward's residence.

"§ 35A-1281. *Removal of ward's personalty from State.*--(a) For purposes of this section, the term 'personal estate' means:

- (1) personal property;
- (2) personal property substituted for realty by decree of court;
- (3) any money arising from the sale of real estate, whether the same be in the hands of any guardian residing in this State; or in the hands of any executor, administrator, or other person holding for the ward; or, if not being adversely held and claimed, not in the lawful possession or control of any person.

(b) Where any ward residing in another state or territory, or in the District of Columbia, or Canada, or other foreign country, is entitled to any personal estate in this State, the ward's guardian or trustee duly appointed at the place where such ward resides, or, in the event no guardian or trustee has been appointed, the court or officer of the court authorized by the laws of such place to receive moneys belonging to any ward when no guardian or trustee has been appointed, may apply to have such estate removed to the residence of the ward by petition filed before the clerk in the county in which the property or some portion thereof is situated. Such petition shall be proceeded with as in other cases of special proceedings.

(c) The petitioner must show to the court a copy of his appointment as a guardian or trustee and bond duly authenticated, and must prove to the court that the bond is sufficient, in the ability of the sureties as

well as in amount, to secure all the estate of the ward wherever situated: Provided, that in all cases where a banking institution, resident and doing business in a foreign state, is a guardian or trustee of any person and is not required to execute a bond to qualify as guardian or trustee under the laws of the state in which such guardian or trustee qualified and was appointed, and no sureties are or were required by the state in which said banking institution qualified as guardian or trustee, and this fact affirmatively appears to the court, then the personal estate of the ward may be removed from this State without the finding of a court with reference to any sureties, and the court in which the petition for the removal of the property of the ward is filed may order the transfer and removal of the property of the ward and the payment and delivery of the same to the nonresident guardian or trustee without regard to whether a nonresident guardian or trustee has filed a bond with sureties; and the finding of the court that the said guardian or trustee is a banking institution and has duly qualified and been appointed guardian or trustee under the laws of the state where the ward is resident shall be sufficient. Any person may be made a party defendant to the proceeding who may be made a party defendant in civil actions under the provisions of Chapter 1A of the General Statutes.

"Article 13.

"Termination of Guardianship; Estates Without Guardians.

"§ 35A-1290. *Removal by clerk.*--(a) The clerk has the power and authority on information or complaint made to remove any guardian appointed under the provisions of this Subchapter, to appoint successor guardians, and to make rules or enter orders for the better management of estates and the better care and maintenance of wards and their dependents.

(b) It is the clerk's duty to remove a guardian or to take other action sufficient to protect the ward's interests in the following cases:

- (1) The guardian wastes the ward's money or estate or converts it to his own use.
- (2) The guardian in any manner mismanages the ward's estate.
- (3) The guardian neglects to care for or maintain the ward or his dependents in a suitable manner.
- (4) The guardian or his sureties are likely to become insolvent or to become nonresidents of the State.
- (5) The original appointment was made on the basis of a false representation or a mistake.

- (6) The guardian has violated a fiduciary duty through default or misconduct.
 - (7) The guardian has a private interest, whether direct or indirect, that might tend to hinder or be adverse to carrying out his duties as guardian.
- (c) It is the clerk's duty to remove a guardian in the following cases:
- (1) The guardian has been adjudged incompetent by a court of competent jurisdiction and has not been restored to competence.
 - (2) The guardian has been convicted of a felony under the laws of the United States or of any state or territory of the United States or of the District of Columbia and his citizenship has not been restored.
 - (3) The guardian was originally unqualified for appointment and continues to be unqualified, or the guardian would no longer qualify for appointment as guardian due to a change in residence, a change in the charter of a corporate guardian, or any other reason.
 - (4) The guardian is the ward's spouse and has lost his rights as provided by Chapter 31A of the General Statutes.
 - (5) The guardian fails to post, renew, or increase a bond as required by law or by order of the court.
 - (6) The guardian refuses or fails without justification to obey any citation, notice, or process served on him in regard to the guardianship.
 - (7) The guardian fails to file required accountings with the clerk.
 - (8) The clerk finds the guardian unsuitable to continue serving as guardian for any reason.

" § 35A-1291. *Interlocutory orders on revocation.*--In all cases where the letters of a guardian are revoked, the clerk may, pending the resolution of any controversy in respect to such removal, make such interlocutory orders and decrees as the clerk finds necessary for the protection of the ward or the ward's estate or the other party seeking relief by such revocation.

" § 35A-1292. *Resignation.*--(a) Any guardian who wishes to resign may apply in writing to the clerk, setting forth the circumstances of the case. If a general guardian or guardian of the estate, at the time of making the application, also exhibits his final account for settlement, and if the clerk is satisfied that the guardian has fully accounted, the clerk may accept the resignation of the guardian and discharge him and appoint a successor guardian, but the guardian so discharged and his sureties are still liable in relation to all matters

connected with the guardianship before the discharge.

(b) A general guardian who wishes to resign as guardian of the estate of the ward but continue as guardian of the person of the ward may apply for the partial resignation by petition as provided in subsection (a) of this section. If the general guardian also exhibits his final account as guardian of the estate for settlement, and if the clerk is satisfied that the general guardian has fully accounted as guardian of the estate, the clerk may accept the resignation of the general guardian as guardian of the estate, discharge him as guardian of the estate, and issue to him letters of appointment as guardian of the person, but the general guardian so discharged as guardian of the estate and his sureties are still liable in relation to all matters connected with the guardianship of the estate before the discharge.

"§ 35A-1293. *Appointment of successor guardian.*--Upon the removal, death, or resignation of a guardian, the clerk shall appoint a successor guardian following the same criteria that would apply to the initial appointment of a guardian.

"§ 35A-1294. *Estates without guardians.*--(a) Whenever a general guardian or guardian of the estate is removed, resigns, or stops serving without making a full and proper accounting, the successor guardian, or the clerk if there is no successor guardian, shall initiate a proceeding to compel an accounting. The surety or sureties on the previous guardian's bond shall be served with notice of the proceeding.

(b) If no successor guardian has been appointed, the clerk may act as receiver or appoint some discreet person as a receiver to take possession of the ward's estate, to collect all moneys due the ward, and to secure, lend, invest, or apply the same for the benefit and advantage of the ward, under the direction of the clerk until a successor guardian is appointed. The accounts of the receiver shall be returned, audited, and settled as the clerk may direct. The receiver shall be allowed such amounts for his time, trouble, and responsibility as seem to the clerk reasonable and proper. Such receivership may continue until a suitable guardian can be appointed.

(c) When another guardian is appointed, he may apply by motion, on notice, to the clerk for an order directing the receiver to pay over all the money, estate, and effects of the ward. If no such guardian is appointed, the ward shall have the same remedy against the receiver on becoming age 18 or otherwise emancipated if the ward is a minor or on being restored to competence if the ward is an incompetent

person. In the event of the ward's death, his executor, administrator, or collector, and the heir or personal representative of the ward shall have the same remedy against the receiver.

"SUBCHAPTER III. MANAGEMENT OF WARD'S ESTATE.

"Article 14.

"Sale, Mortgage, Exchange or Rental of Ward's Estate.

"§ 35A-1301. *Special proceedings to sell, mortgage, or rent.*--(a) Whenever used herein, the word 'guardian' shall be construed to include general guardian, guardian of the estate, ancillary guardian, next friend, guardian *ad litem*, or commissioner of the court acting pursuant to this Article, but not a guardian who is guardian of the person only; and the word 'mortgage' shall be construed to include deeds of trust.

(b) A guardian may apply to the clerk, by verified petition setting forth the facts, for the sale, mortgage, exchange, or rental of any part of his ward's estate, real or personal, and such proceeding shall be conducted as in other cases of special proceedings. The clerk, in his discretion, may direct that the next of kin or presumptive heirs of the ward be made parties to such proceeding. The clerk may order a sale, mortgage, exchange, or rental to be made by the guardian in such way and on such terms as may be most advantageous to the interest of the ward, upon finding by satisfactory proof that:

- (1) the ward's interest would be materially promoted by such sale, mortgage, exchange, or rental, or
- (2) the ward's personal estate has been exhausted or is insufficient for his support and the ward is likely to become chargeable on the county, or
- (3) a sale, mortgage, exchange, or rental of any part of the ward's real or personal estate is necessary for his maintenance or for the discharge of debts unavoidably incurred for his maintenance, or
- (4) any part of the ward's real estate is required for public purposes, or
- (5) there is a valid debt or demand against the estate of the ward; provided, when an order is entered under this subdivision, (i) it shall authorize the sale of only so much of the personal or real estate as may be sufficient to discharge such debt or demand, and (ii) the proceeds of sale shall be considered as assets in the hands of the guardian for the benefit of creditors, in like manner as assets in the hands of a personal representative, and the same proceedings may be had against the guardian with respect to such assets as might be taken against an

executor, administrator or collector in similar cases.

The order shall specify particularly the property thus to be disposed of, with the terms of renting or sale or exchange or mortgage, and shall be entered at length on the records of the court. The guardian may not mortgage the property of his ward for a term of years in excess of the term fixed by the court in its order.

(c) In the case of a ward who is a minor, no sale, mortgage, exchange, or rental shall be made until approved by the superior court judge, nor shall the same be valid, nor any conveyance of the title made, unless confirmed and directed by the judge, and the proceeds of the sale, mortgage, exchange, or rental shall be exclusively applied and secured to such purposes and on such trusts as the judge shall specify.

(d) All petitions filed under this section wherein an order is sought for the sale, mortgage, exchange, or rental of the ward's real estate or both real and personal property shall be filed in the county in which all or any part of the real estate is situated. If the order sought is for the sale, mortgage, exchange, or rental of the ward's personal estate, the petition shall be filed in the county in which any or all of such personal estate is situated.

(e) The procedure for a sale pursuant to this section shall be as provided by Article 29A of Chapter 1 of the General Statutes.

(f) Nothing herein contained shall be construed to divest the court of the power to order private sales as heretofore ordered in proper cases.

(g) On and after June 1, 1973, no sales of property belonging to minors or incompetent persons prior to that date by next friend, guardian *ad litem*, or commissioner of the court regular in all other respects shall be declared invalid nor shall any claim or defense be asserted on the grounds that said sale was not made by a duly appointed guardian as provided herein or on the grounds that said minor or incompetent person was not represented by a duly appointed guardian.

"§ 35A-1302. *Procedure when real estate lies in county in which guardian does not reside.*--In all cases where a guardian is appointed under the authority of Chapter 35A and such guardian applies to the court for an order to sell, mortgage, or exchange all or part of his ward's real estate, and such real estate is situated in a county other than the county in which the guardian is appointed and qualified, the guardian shall first apply to the clerk of the county in which he was appointed and qualified for an order showing that the sale, mortgage, or exchange of his ward's real estate is necessary or that the ward's interest would be materially promoted thereby. The clerk to whom

such application is made shall hear and pass upon the same and enter his findings and order as to whether said sale, mortgage, or exchange is necessary or would materially promote the ward's interest, and said order and findings shall be certified to the clerk of the county in which the ward's land, or some part of it, is located and before whom any petition or application is filed for the sale, mortgage, or exchange of said land. Such findings and orders so certified shall be considered by the court along with all other evidence and circumstances in passing upon the petition in which an order is sought for the sale, mortgage, or exchange of said land. In the case of a ward who is a minor, before such findings and orders shall become effective the same shall be approved by the superior court judge holding the courts of the district or by the resident judge.

" § 35A-1303. *Fund from sale has character of estate sold and subject to same trusts.*--Whenever, in consequence of any sale under G.S. 35A-1301, the real or personal property of the ward is saved from demands to which in the first instance it may be liable, the final decree shall declare and set apart a portion of the personal or real estate thus saved, of value equal to the real and personal estate sold, as property exchanged for that sold; and in all sales by guardians whereby real is substituted by personal, or personal by real property, the beneficial interest in the property acquired shall be enjoyed, alienated, devised or bequeathed, and shall descend and be distributed, as by law the property sold might and would have been had it not been sold, until it be reconverted from the character thus impressed upon it by some act of the owner and restored to its character proper.

" § 35A-1304. *Sale of perishable goods on order of clerk.*--Every guardian shall sell, by order of the clerk, all such goods and chattels of his ward as may be liable to perish or be the worse for keeping. The procedure for the sale shall be as provided by Article 29A of Chapter 1 of the General Statutes.

" § 35A-1305. *When timber may be sold.*--In case the land cannot be rented for enough to pay the taxes and other dues thereof, and there is not money sufficient for that purpose, the guardian, with the consent of the clerk, may annually dispose of or use so much of the lightwood, and box or rent so many pine trees, or sell so much of the timber on the same, as may raise enough to pay the taxes and other duties thereon, and no more. In addition, the guardian, with the consent of the clerk, may annually dispose of, use, or sell so much of the timber as is necessary to maintain good forestry practices.

" § 35A-1306. *Abandoned incompetent spouse.*--(a) A guardian of a married person found incompetent who has been abandoned, whether the guardian was appointed before or after the abandonment, may initiate a special proceeding before the clerk having jurisdiction over the ward requesting the issuance of an order authorizing the sale of the ward's separate real property without the joinder of the abandoning spouse.

(b) The ward's spouse shall be served with notice of the special proceeding in accordance with G.S. 1A-1, Rule 4.

(c) If the clerk finds:

- (1) That the spouse of the ward has willfully and without just cause abandoned the ward for a period of more than one year; and
- (2) That the spouse of the ward has knowledge of the guardianship, or that the guardian has made a reasonable attempt to notify the spouse of the guardianship; and
- (3) That an order authorizing the sale of the separate real property of the ward is in the best interest of the ward;

the clerk may issue such an order thereby barring the abandoning spouse from all right, title and interest in any of the ward's separate real property sold pursuant to such an order.

" § 35A-1307. *Spouse of incompetent husband or wife entitled to special proceeding for sale of property.*--Every married person whose husband or wife is adjudged incompetent and is confined in a mental hospital or other institution in this State, and who was living with the incompetent spouse at the time of commitment shall, if he or she be in needy circumstances, have the right to bring a special proceeding before the clerk to sell the property of the incompetent spouse, or so much thereof as is deemed expedient, and have the proceeds applied for support: Provided, that said proceeding shall be approved by the judge of the superior court holding the courts of the judicial district where the said property is situated. When the deed of the commissioner appointed by the court, conveying the lands belonging to the incompetent spouse is executed, probated, and registered, it conveys a good and indefeasible title to the purchaser."

Sec. 2. All of Article 4 of Chapter 35 of the General Statutes, "Mortgage or Sale of Estates Held by the Entireties", is recodified as Article 15 of new Chapter 35A of the General Statutes and the sections thereof shall be renumbered accordingly.

Sec. 3. All of Article 5 of Chapter 35 of the General Statutes, "Surplus Income and Advancements", is recodified as Article 16 of new Chapter 35A of the General Statutes and the Revisor of Statutes is authorized to renumber the sections accordingly.

Sec. 3.1. G.S. 35-28 before being recodified and renumbered as provided by Section 3 of this act reads as rewritten:

"§ 35-28. *Advancements only when ~~insanity~~ incompetence permanent.*-No such application shall be allowed under this ~~Chapter~~ Article but in cases of such permanent and continued ~~insanity as that the nonsane~~ incompetence as that the incompetent person shall be judged by the clerk to be incapable, notwithstanding any lucid intervals, to make advancements with prudence and discretion."

Sec. 3.2. G.S. 35-29 before being recodified and renumbered as provided by Section 3 of this act reads as rewritten:

"§ 35-29. ~~Decrees~~ *Orders suspended upon restoration of ~~sanity~~ competence.*--Upon such ~~insane person being restored to sanity~~, incompetent person's being restored to competence, every order made for advancements shall cease to be further executed, and his estate shall be discharged of the same."

Sec. 4. All of Article 5A of Chapter 35 of the General Statutes, "Gifts from Income for Certain Purposes", is recodified as Article 17 of new Chapter 35A of the General Statutes and the sections thereof shall be renumbered accordingly.

Sec. 5. All of Article 5B of Chapter 35 of the General Statutes, "Gifts from Principal for Certain Purposes", is recodified as Article 18 of new Chapter 35A of the General Statutes and the Revisor of Statutes shall renumber the sections accordingly and change the statutory citations in the heading and text of G.S. 35-29.7 and G.S. 35-29.8 to conform to the new numbering of the cited sections.

Sec. 6. All of Article 5C of Chapter 35 of the General Statutes, "Declaring Revocable Trust Irrevocable and Making Gift of Incompetent's Life Interest Therein", is recodified as Article 19 of new Chapter 35A of the General Statutes and the Revisor of Statutes shall renumber the sections accordingly and change the statutory citations in the heading and text of G.S. 35-29.13 and G.S. 35-29.14 to conform to the new numbering of the cited sections.

Sec. 7. All of Articles 1, 1A, 2, and 3 of Chapter 35 of the General Statutes is repealed.

Sec. 8. The title of Chapter 35 of the General Statutes is rewritten to read, "Sterilization Procedures".

Sec. 9. All of Article 4A of Chapter 33 of the General Statutes, "Guardians' Deeds Validated When Seal Omitted", is recodified as Article 20 of new Chapter 35A of the General Statutes and the sections thereof shall be renumbered accordingly.

Sec. 10. All of Articles 1, 2, 3, 4, 5, 6, 7, 8, and 11 of Chapter 33 of the General Statutes is repealed.

Sec. 11. The title of Chapter 33 of the General Statutes is rewritten to read, "Uniform Gifts to Minors Act".

Sec. 12. G.S. 1-339.1(a)(6) is amended by deleting "Article 4 of Chapter 35", and substituting "Article 15 of Chapter 35A".

Sec. 13. G.S. 1A-1, Rule 17(b)(1) reads as rewritten:

"(1) Infants, etc., Sue by Guardian or Guardian *Ad Litem*. In actions or special proceedings when any of the parties plaintiff are infants or incompetent persons, whether residents or nonresidents of this State, they must appear by general or testamentary guardian, if they have any within the State or by guardian *ad litem* appointed as hereinafter provided; but if the action or proceeding is against such guardian, or if there is no such known guardian, then such persons may appear by guardian *ad litem*. ~~The duty of the State solicitors to prosecute in the cases specified in Chapter 33 of the General Statutes, entitled 'Guardian and Ward,' is not affected by this section.~~"

Sec. 14. G.S. 7A-111(d) is amended by deleting "Chapter 35" and substituting "Chapter 35A".

Sec. 15. G.S. 7A-289.25(4) is amended by deleting "Article 1 of Chapter 33" and substituting "Chapter 35A".

Sec. 16. G.S. 7A-451(a)(13) is amended by deleting "Chapter 35, Article 1A", and substituting "Subchapter I of Chapter 35A".

Sec. 17. G.S. 28A-23-2 is amended by deleting "Chapter 33", and substituting "Chapter 35A".

Sec. 18. G.S. 34-2.1 reads as rewritten:

"§ 34-2.1. *Guardian's powers as to property; validation of prior acts.* Any guardian appointed under the provisions of this Chapter may be guardian of all property, real or personal, belonging to the ward to the same extent as a guardian appointed under the provisions of ~~Chapter 33 or Chapter 35 of the General Statutes of North Carolina, as the case may be, and the provisions of such chapters~~ Chapter 35A of the General Statutes, and the provisions of such Chapter concerning the custody, management and disposal of property shall apply in any case not provided for by this Chapter. All acts heretofore performed by guardians appointed under the provisions of this Chapter with respect to the custody, management and disposal of property of wards are hereby validated where no provision for such acts was provided for by this Chapter, if such acts were performed under and in conformity with the provisions of ~~Chapter 33 or Chapter 35 of the General Statutes of North Carolina, Chapter 35A of the General Statutes as the~~

case may be."

Sec. 19. G.S. 34-4 is amended by deleting "Article 6, Chapter 33", and substituting "Article 11, Chapter 35A".

Sec. 20. G.S. 74C-12(a)(19) is amended by deleting "Chapter 35" and substituting "Chapter 35A or former Chapter 35".

Sec. 21. G.S. 74D-10(a)(11) is amended by deleting "Chapter 35" and substituting "Chapter 35A or former Chapter 35".

Sec. 22. G.S. 75D-3(i)(2)a is amended by deleting "Chapter 33", and substituting "Chapter 35A".

Sec. 23. G.S. 108A-15 is amended by deleting "Chapter 35, Articles 1A and 2", and substituting "Chapter 35A".

Sec. 24. G.S. 108A-101(m) is amended by deleting "Chapter 33, Chapter 35", and substituting "Chapter 35A".

Sec. 25. G.S. 108A-105(c) reads as rewritten:

"(c) If, at the hearing, the judge finds by clear, cogent, and convincing evidence that the disabled adult is in need of protective services and lacks capacity to consent to protective services, he may issue an order authorizing the provision of protective services. This order may include the designation of an individual or organization to be responsible for the performing or obtaining of essential services on behalf of the disabled adult or otherwise consenting to protective services in his behalf. Within 60 days from the appointment of such an individual or organization, the court will conduct a review to determine if a petition should be initiated in accordance with ~~Chapter 35, Article 1A, or or Article 2, as appropriate;~~ Chapter 35A; for good cause shown, the court may extend the 60 day period for an additional 60 days, at the end of which it shall conduct a review to determine if a petition should be initiated in accordance with ~~Chapter 35, Article 1A, or or Article 2, as appropriate.~~ Chapter 35A. No disabled adult may be committed to a mental health facility under this Article."

Sec. 26. G.S. 122C-122 reads as rewritten:

"§ 122C-122. *Public guardians.*--The officers and employees of the Division, or any successor agency, and the area director or any officer or employee of an area authority designated by the area board, or any officer or employee of any area facility designated by the area board, may, if they are a disinterested public agent as defined by ~~G.S. 35-1.7(4),~~ G.S. 35A-1202(4), serve as guardians for adults adjudicated incompetent under the provisions of ~~Article 1A of Chapter 35.~~ Subchapter I of Chapter 35A of the General Statutes, and they shall so act if ordered to serve in that capacity by the clerk of superior court having jurisdiction of a ~~guardianship~~ proceeding brought under

that ~~Article Subchapter~~. Bond shall be required or purchased as provided by ~~G.S. 35-1-19~~ G.S. 35A-1239."

Sec. 27.

(a) This act shall become effective October 1, 1987.

(b) Except as provided otherwise herein, Subchapter I of Chapter 35A of the General Statutes, as enacted hereby, shall apply only to proceedings for an adjudication of incompetence commenced on or after the effective date of this Act. Article 3 of Chapter 35A shall apply to proceedings for restoration to competence commenced on or after the effective date of this Act, regardless of whether incompetence was adjudicated under Chapter 35 or Chapter 35A of the General Statutes.

(c) Except as provided otherwise herein, Subchapter 11 of Chapter 35A of the General Statutes, as enacted hereby, shall apply only to proceedings for the appointment of a guardian commenced on or after the effective date of this Act. Articles 8, 9, 10, and 13 of Chapter 35A shall also apply, from and after the effective date of this Act, to all proceedings in which a guardian or trustee has been appointed under Chapter 33 or Chapter 35 of the General Statutes, provided that nothing in this Act shall affect the validity of the appointment of any guardian or trustee properly appointed under Chapter 33 or Chapter 35 of the General Statutes.

(d) Subchapter III of Chapter 35A of the General Statutes, as enacted hereby, shall apply to all proceedings in which a guardian or trustee has been or shall be appointed under Chapter 33, Chapter 35, or Chapter 35A of the General Statutes.

In the General Assembly read three times and ratified this the 6th day of July, 1987.

S.B. 137

CHAPTER 551

AN ACT TO PROVIDE THAT AN AUCTION IS NOT AN "OFF-PREMISES SALE," AND TO MAKE OTHER AMENDMENTS TO THE CANCELLATION LAW.

The General Assembly of North Carolina enacts:

Section 1. G.S. 14-401.13(c)(1) is amended as follows:

- (1) by deleting the period at the end of sub-subdivision f. and substituting the phrase "; or"; and
- (2) by adding to the end a new sub-subdivision to read:
"g. Executed at an auction."

Sec. 2. The third paragraph of the NOTICE OF CANCELLATION contained in G.S. 14-401.13(a)(2) is amended by adding a new sentence at the end thereof as follows:

"In the event you purchased antiques at an antique show and cancel, and your residence is out-of-state, you must deliver the purchased goods to the seller."

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 6th day of July, 1987.

S.B. 575

CHAPTER 552

AN ACT TO PROVIDE FOR COOPERATION BETWEEN STATE,
LOCAL AND FEDERAL LAW ENFORCEMENT AGENCIES IN
SPECIAL UNDERCOVER OPERATIONS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-39(h) is amended by deleting, each time it occurs, the word "local" and substituting the words "local, state or federal".

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 7th day of July, 1987.

S.B. 648

CHAPTER 553

AN ACT TO MODIFY THE LAW REGARDING COSTS FOR
APPEAL FOR TRIAL DE NOVO.

The General Assembly of North Carolina enacts:

Section 1. G.S. 7A-228 is amended by inserting a new subsection to read:

"(b1) A person desiring to appeal as a pauper shall, within 10 days of entry of judgment by the magistrate, file an affidavit that he is unable by reason of his poverty to pay the costs of appeal and proves, by one or more witnesses, that he has a meritorious cause of action or defense. Within 20 days after entry of judgment, a superior or district court judge, magistrate, or the clerk of the superior court may authorize a person to appeal to district court as a pauper."

Sec. 2. This act shall become effective October 1, 1987.

In the General Assembly read three times and ratified this the 6th day of July, 1987.

H.B. 25

CHAPTER 554

AN ACT TO MAKE THE LAW CONCERNING STATE
PRIVILEGE LICENSE TAXES ON GUN DEALERS MORE
EQUITABLE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-80 is rewritten to read:

"§ 105-80. *Firearms dealers and dealers in other weapons.*--(a) **Firearms.** Every person, firm, or corporation who is engaged in the business of selling or offering for sale firearms, other than antique firearms or firearms that are weapons of mass death and destruction, shall obtain a license from the Secretary of Revenue for the privilege of engaging in business and shall pay a tax of fifty dollars (\$50.00) for the license. As used in this subsection, the terms 'antique firearm' and 'weapons of mass death and destruction' have the same meanings as in G.S. 14-409.11 and G.S. 14-288.8, respectively. As used in this subsection, the term 'engaged in the business of' shall mean devoting time, attention, and labor to selling or offering for sale firearms as a regular course of trade or business with the principal objective of profit through the repetitive purchase and sale, or the manufacture for sale, of firearms. Such term shall not include the making of occasional sales, exchanges, or purchases of firearms for the enhancement of a personal collection, or the sale of all or part of a personal collection of firearms.

A license issued under this subsection authorizes the licensee to engage in business at the location for which the license is issued and at a gun show held in the State. A 'gun show' is an event sponsored either by an organization devoted to the collection, competitive use, or other sporting use of firearms or by an organization that sponsors events devoted to the collection, competitive use, or other sporting use of firearms in the community.

(b) **Other Weapons.** Every person, firm, or corporation who is engaged in the business of selling or offering for sale bowie knives, dirks, daggers, leaded canes, iron or metallic knuckles, or similar weapons shall obtain a statewide license from the Secretary of Revenue for the privilege of engaging in business and shall pay a tax of two hundred dollars (\$200.00) for the license.

(c) **Local Licenses.** Counties and cities may levy a license tax on a business taxed under this section at an amount that does not exceed the State tax."

Sec. 2. This act shall become effective October 1, 1987.

In the General Assembly read three times and ratified this the 6th day of July, 1987.

H.B. 421

CHAPTER 555

AN ACT TO REVISE MAXIMUM FEES AUTHORIZED FOR THE
NORTH CAROLINA BOARD OF DENTAL EXAMINERS.

The General Assembly of North Carolina enacts:

Section 1. Subsections (1) through (8) of G.S. 90-39, which authorize maximum fees to be charged for Dentists, are revised and rewritten, to read as follows:

- | | | |
|------|--|----------|
| "(1) | Each application for general dentistry examination | \$200.00 |
| (2) | Each general dentistry license renewal, which fee shall be annually fixed by the Board and not later than November 30 of each year it shall give written notice of the amount of the renewal fee to each dentist licensed to practice in this State by mailing such notice to the last address of record with the Board of each such dentist | 75.00 |
| (3) | Each provisional license | 75.00 |
| (4) | Each intern permit or renewal thereof | 75.00 |
| (5) | Each certificate of license to a resident dentist desiring to change to another state or territory | 25.00 |
| (6) | Each license issued to a practitioner of another state or territory to practice in this State | 125.00 |
| (7) | Each license to resume the practice issued to a dentist who has retired from and returned to this State | 125.00 |
| (8) | Each instructor's license or renewal thereof | 75.00" |

Sec. 2. Subsections (1) through (5) of G.S. 90-232, which authorize maximum fees to be charged for Dental Hygienists, are revised and rewritten, to read as follows:

- | | | |
|------|--|----------|
| "(1) | Each applicant for examination | \$125.00 |
| (2) | Each renewal certificate, which fee shall be annually fixed by the Board and not later than November 30 of each year it shall give written notice of the amount of the renewal fee to each | |

| | | |
|-----|---|---------|
| | dental hygienist licensed to practice in this State by mailing such notice to the last address of record with the Board of each such dental hygienist | 60.00 |
| (3) | Each restoration of license | 60.00 |
| (4) | Each provisional license | 60.00 |
| (5) | Each certificate of license to resident dental hygienist desiring to change to another state or territory | 25.00." |

Sec. 3. This act shall become effective upon ratification.

In the General Assembly read three times and ratified this the 6th day of July, 1987.

H.B. 478

CHAPTER 556

AN ACT TO CLARIFY THE GIFT TAX EFFECT OF LAPSED GENERAL POWERS OF APPOINTMENT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-188.1(b) is amended by adding a new subdivision at the end to read:

"(4) The lapse of a general power of appointment during the life of the individual possessing the power shall be considered a relinquishment of the power. The rule of the preceding sentence shall apply with respect to the lapse of such powers during any calendar year only to the extent that the interest in property which could have been appointed by exercise of the lapsed power exceeds in value the greater of the following amounts:

- a. Five thousand dollars (\$5,000) or
- b. Five percent (5%) of the aggregate value of the interest in property out of which, or the proceeds of which, the exercise of the lapsed power could be satisfied."

Sec. 2. This act is effective upon ratification and applies to general powers of appointment that lapse on or after the date of ratification.

In the General Assembly read three times and ratified this the 6th day of July, 1987.

H.B. 605

CHAPTER 557

AN ACT TO REFORM THE FRANCHISE TAX APPLICABLE TO TELECOMMUNICATIONS COMPANIES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-120(a) reads as rewritten:

"(a) Every person, firm, or corporation, domestic or foreign, owning and/or operating a ~~telephone business~~ business entity for the ~~transmission of messages and/or conversations to, from, through, in or across this state,~~ provision of local telecommunications service, shall within 30 days after the first day of January, April, July and October of each year, make and deliver to the Secretary of Revenue a quarterly return, verified by the affirmation of the officer or authorized agent making such return, showing the total amount of gross receipts of such ~~telephone company~~ business entity for the three months ending the last day of the month immediately preceding such return, and pay, at the time of making such return, the franchise, license or privilege tax herein imposed. Gross receipts shall be reported on an accrual basis.

For purposes of this section:

- (1) 'Local telecommunications service' means telecommunications service provided wholly within a LATA entitling the user to access to a local telephone exchange for the privilege of telephonic quality communication with substantially all persons in the local telephone exchange. Provided, however, local telecommunications service does not include intraLATA or interLATA toll telecommunications services, or private telecommunications services;
- (2) 'LATA' is a Local Access and Transport Area representing a geographical area comprising one or more telephone exchange areas;
- (3) 'InterLATA telecommunications' is telecommunications service provided between two or more LATAs;
- (4) 'Toll telecommunications service' means:
 - a. a telephonic quality communication for which:
 1. there is a toll charge which varies in amount with the distance and elapsed transmission time of each individual communication; and
 2. the charge is paid within the United States; and
 - b. a service which entitles the subscriber, upon payment of a periodic charge (determined as flat amount or upon the basis of total elapsed transmission time), to the privilege of an unlimited number of telephonic communications to or from all or a substantial portion of the persons having telephone or radiotelephone stations in a specified area which is outside the local telephone exchange;
- (5) 'Private telecommunications service' means a service furnished to a subscriber that entitles the subscriber to

exclusive or priority use of a communications channel or group of channels between exchanges."

Sec. 2. G.S. 105-120(b) reads as rewritten:

"(b) An annual franchise or privilege tax of three and twenty-two hundredths percent (3.22%), payable quarterly, on the gross receipts of such ~~telephone company~~ business entity, is herein imposed for the privilege of engaging in such business within this State. Provided, however, gross receipts from local telephone service shall not include telecommunications access charges. Such gross receipts shall include all rentals, rentals and other similar charges, charges; and all tolls received from business which both originates and terminates in the State of North Carolina, whether such business in the course of transmission goes outside of this State or not. Provided, where any city or town in the State has heretofore sold at public auction to the highest bidder the right, license and/or privilege of engaging in such business in such city or town, based upon a percentage of gross revenue of such ~~telephone company~~ business entity, and is now collecting and receiving therefor a revenue tax not exceeding one percent of such revenues, the amount so paid by such ~~operating company~~ business entity, upon being certified by the treasurer of such municipality to the Secretary of Revenue, shall be from time to time credited by the Secretary of Revenue to such ~~telephone company~~ business entity upon the tax imposed by the State under this section of this Chapter. Telecommunications access charges are those charges paid to a provider of local telephone service for access to an interconnection with the local telephone exchange."

Sec. 3. G.S. 105-120(f) reads as rewritten:

"(f) Counties, cities and towns shall not levy any franchise, license, or privilege tax on the business taxed under this section or under G.S. 105-164.4(4c)."

Sec. 3.1 G.S. 105-164.3(25) is amended to add the following phrase after "105-120,": "a business entity that provides local, toll or private telecommunications service as defined by G.S. 105-120(a)".

Sec. 4. G.S. 105-164.4(4a) reads as rewritten:

"(4a) At the rate of three percent (3%) of the gross receipts derived by a utility from sales of electricity, piped natural gas, or ~~intrastate telephone service~~, local telecommunications service as defined by G.S. 105-120(a). A person who operates a utility is considered a retailer under this Article."

Sec. 5. G.S. 105-164.4 is amended by adding a new subdivision to read:

"(4c) At the rate of six and one-half percent (6 1/2%) of the gross receipts derived from providing toll telecommunications services or private telecommunications services as defined by G.S. 105-120(a) that both originate from and terminate in the State which are not subject to the privilege tax under G.S. 105-120. Any business entity that provides the service outlined above is considered a retailer under this Article. This subdivision shall not apply to telephone membership corporations as described in Chapter 117 of the General Statutes.

Sec. 6. G.S. 105-164.16(c) is amended by adding the phrase "and G.S. 105-164.4(4c)" after the phrase "G.S. 105-164.4(4a)".

Sec. 7. G.S. 105-467 reads as rewritten:

"§ 105-467. *Sales tax imposed; limited to items on which the State now imposes a three percent sales tax.*-- The sales tax which may be imposed under this Article is limited to a tax at the rate of one percent (1%) of:

(1) The sales price of those articles of tangible personal property now subject to the three percent (3%) sales tax imposed by the State under G.S. 105-164.4(1);

(2) The gross receipts derived from the lease or rental of tangible personal property where the lease or rental of such property is an established business now subject to the three percent (3%) sales tax imposed by the State under G.S. 105-164.4(2);

(3) The gross receipts derived from the rental of any room or lodging furnished by any hotel, motel, inn, tourist camp or other similar accommodations now subject to the three percent (3%) sales tax imposed by the State under G.S. 105-164.4(3); and

(4) The gross receipts derived from services rendered by laundries, dry cleaners, cleaning plants and similar type businesses now subject to the three percent (3%) sales tax imposed by the State under G.S. 105-164.4(4).

The sales tax authorized by this Article does not apply to sales by a utility of electricity, piped natural gas, ~~or intrastate telephone service~~ local, toll, or private telecommunications services as defined by G.S. 105-120(a).

The exemptions and exclusions contained in G.S. 105-164.13 and the refund provisions contained in G.S. 105-164.14 shall apply with equal force and in like manner to the local sales and use tax authorized to be levied and imposed under this Article. A taxing county shall have no authority, with respect to the local sales and use tax imposed under this Article to change, alter, add to or delete any refund provisions contained in G.S. 105-164.14, or any exemptions or exclusions contained in G.S. 105-164.13 or which are elsewhere provided for.

The local sales tax authorized to be imposed and levied under the provisions of this Article shall be applicable to such retail sales, leases, rentals, rendering of services, furnishing of rooms, lodgings or accommodations and other taxable transactions which are made, furnished or rendered by retailers whose place of business is located within the taxing county. The tax imposed shall apply to the furnishing of rooms, lodging or other accommodations within the county which are rented to transients. However no tax shall be imposed where the tangible personal property sold is delivered to the purchaser at a point outside the taxing county by the retailer or his agent, or by a common carrier."

Sec. 8. G.S. 105-164.14(b) reads as rewritten:

"(b) The Secretary of Revenue shall make refunds semiannually to hospitals not operated for profit (including hospitals and medical accommodations operated by an authority created under the Hospital Authorities Law, Article 12 of Chapter 131), educational institutions not operated for profit, churches, orphanages and other charitable or religious institutions and organizations not operated for profit of sales and use taxes paid under this Article, except under G.S. 105-164.4(4a) and G.S. 105-164.4(4c), by such institutions and organizations on direct purchases of tangible personal property for use in carrying on the work of such institutions or organizations. Sales and use tax liability indirectly incurred by such institutions and organizations on building materials, supplies, fixtures and equipment which shall become a part of or annexed to any building or structure being erected, altered or repaired for such institutions and organizations for carrying on their nonprofit activities shall be construed as sales or use tax liability incurred on direct purchases by such institutions and organizations, and such institutions and organizations may obtain refunds of such taxes indirectly paid. The Secretary of Revenue shall also make refunds semiannually to all other hospitals (not specifically excluded herein) of sales and use tax paid by them on medicines and drugs purchased for use in carrying out the work of such hospitals. This subsection does not apply to organizations, corporations, and institutions that are owned and controlled by the United States, the State, or a unit of local government, except hospital facilities created under Article 12 of Chapter 131 of the General Statutes and nonprofit hospitals owned and controlled by a unit of local government that elect to receive semiannual refunds under this subsection instead of annual refunds under subsection (c). In order to receive the refunds herein provided for, such institutions and organizations shall file a written request for refund covering the first six months of the calendar year on or before the fifteenth day of October next following the close of said period,

and shall file a written request for refund covering the second six months of the calendar year on or before the fifteenth day of April next following the close of that period. Such requests for refund shall be substantiated by such proof as the Secretary of Revenue may require, and no refund shall be made on applications not filed within the time allowed by this section and in such manner as the Secretary may require."

Sec. 9. G.S. 105-164.14(c) reads as rewritten:

"(c) Upon receipt of timely applications for refund, the Secretary of Revenue shall make refunds annually to all governmental entities, as hereinafter defined, of sales and use tax paid under this Article, except under G.S. 105-164.4(4a) and G.S. 105-164.4(4c), by said governmental entities on direct purchases of tangible personal property. Sales and use tax liability indirectly incurred by such governmental entities on building materials, supplies, fixtures and equipment which shall become a part of or annexed to any building or structure being erected, altered or repaired which is owned or leased by such governmental entities shall be construed as sales or use tax liability incurred on direct purchases by such governmental entities, and such entities may obtain refunds of such taxes indirectly paid. The refund provisions contained in this subsection shall not apply to any governmental entities not specifically named herein. In order to receive the refund herein provided for, governmental entities shall file a written request for said refund within six months of the close of the fiscal year of the governmental entities seeking said refund, and such request for refund shall be substantiated by such records, receipts and information as the Secretary may require. No refunds shall be made on applications not filed within the time allowed by this section and in such manner as the Secretary may otherwise require. The term 'governmental entities,' for the purposes of this subsection, shall mean all counties, incorporated cities and towns, water and sewer authorities created and existing under the provisions of Chapter 162A of the General Statutes, lake authorities created by a board of county commissioners pursuant to an act of the General Assembly, sanitary districts, regional councils of governments created pursuant to G.S. 160A-470, area mental health, mental retardation, and substance abuse authorities (other than single-county area authorities) established pursuant to Article 4 of Chapter 122C of the General Statutes, district health departments, regional planning and economic development commissions created pursuant to G.S. 158-14, regional economic development commissions created pursuant to G.S. 158-8, regional planning commissions created pursuant to G.S. 153A-391,

metropolitan sewerage districts and metropolitan water districts in this State."

Sec. 10. Prior to the effective date of the tax imposed by Sec. 105-164.4(4c), customers shall be notified by the service providers concerning the change in the law, services subject to this tax and the rate of tax by bill inserts, public notices and other means necessary to adequately apprise the public.

Sec. 11. This act shall become effective January 1, 1989.

In the General Assembly read three times and ratified this the 6th day of July, 1987.

H.B. 672

CHAPTER 558

AN ACT TO CONFORM CERTAIN FIRE TAX DISTRICT BOUNDARIES IN CABARRUS, ROWAN, AND STANLY COUNTIES TO INSURANCE DISTRICT BOUNDARIES.

The General Assembly of North Carolina enacts:

Section 1. The Boundaries of the Midland Fire District in Cabarrus County are as follows:

Beginning at a point (1) on N.C. Highway 27 at the Cabarrus-Stanly County line; thence to a point (2) on the Cabarrus-Stanly County line where Townships 9 and 10 intersect; thence westerly along the Township line to a point (3) where it crosses Little Meadow Creek; thence in a southerly direction along Little Meadow Creek to a point (4) at its intersection with Rocky River; thence northwesterly along Rocky River to a point (5) where Bost Creek runs into Rocky River; thence in a northwesterly direction to a point (6) on Mt. Pleasant Rd., 0.2 mile south of its intersection with Joyner Rd.; thence in a westerly direction to a point (7) on U.S. Highway 601, 0.1 mile south of its intersection with Joyner Rd.; thence southerly along U.S. Highway 601 to a point (8) on U.S. Highway 601 0.3 mile south of its intersection with Flowes Store Rd. East excluding property 1500 feet east of U.S. Highway 601 between this and the preceding point; thence in a southerly direction along U.S. Highway 601 to a point (9) at its intersection with Cal Bost Rd.; thence westerly along Cal Bost Rd. to a point (10) at its intersection with Troutman Rd.; thence southerly along Troutman Rd. to a point (11) where it crosses Anderson Creek excluding property 1000 feet east of Troutman Rd. between this and the preceding point; thence weasterly along Anderson Creek and Horton Branch to a point (12) where Sam Black Rd. crosses Horton Branch; thence in a southwesterly direction to a point (13) on N.C. Highway 27, 1000 feet east of its intersection with Flowes Store Rd.; thence in a southerly direction to a point (14) on Flowes Store Rd. (1132) 0.5 mile south of its intersection with NC

Highway 27; thence in a southerly direction to a point (15) on Flowes tore Rd. (1132) at the Cabarrus - Mecklenburg County line. thence southeasterly along the Cabarrus - Mecklenburg and Cabarrus - Union County line to a point (16) at the Cabarrus- Union- Stanly County lines; thence northeasterly along the Cabarrus- Stanly County line to the point of beginning.

Sec. 2. The boundaries of the Allen Fire District in Cabarrus County are as follows:

Beginning at a point (1) in the southern city limits line of the City of Concord, N.C. at Manor Ave.; thence southerly to a point (2) on Irish Buffalo Creek, 500 feet north of N.C. Highway 49; thence in a westerly direction parallel with N.C. Highway 49 to a point (3) 500 feet west of its intersection with Zion Church Road (1155); thence running parallel with and 500 feet west of Zion Church Road southerly to a point (4) 500 feet west of Zion Church Rd. (1155) due north of where Reedy Creek joins Rocky River; thence due south to a point (5) where Reedy Creek joins Rocky River; thence in an easterly direction with Rocky River to a point (6) 500 feet west of U.S. Highway 601; thence 500 feet west of parallel to U.S. Highway 601 to a point (7) 500 feet south of Parks Lafferty Road; thence in a northeasterly direction to N.C. Highway 200 to a point (8) 700 feet east of Hamby Branch; thence in a northerly direction to a point (9) on Miami Church Road 1000 feet east of its intersection with Joe Bost Road; thence in a northerly direction to a point (10) on Joe Bost Rd. (2627) 0.1 mile south of its intersection with Bost Cut Off Rd. (2626), including property 1000 feet east of Joe Bost Rd. and Silver Haven Estates between this and the preceding point; thence in a northwesterly direction to a point (11) on Cold Springs Road South, 0.2 miles south of Cold Spring Road (said point being at line of Mt. Pleasant Volunteer Fire District); thence northerly with said Mt. Pleasant Volunteer Fire District line to a point (12) on N.C. Highway 49, 200 feet west of its intersection with Cold Springs Church Road (said point being at the line of Mt. Pleasant Volunteer Fire District and Cold Water Volunteer Fire District [revised]); thence in a westerly direction with Cold Water Volunteer Fire District [revised]; to a point (13) at Cold Water Creek and Little Cold Water Creek; thence in a northerly direction with Cold Water Creek to its meeting with Three Mile Branch (point 14); thence in a northerly direction with Three Mile Branch to its intersection with the city limit line of the City of Concord, N.C. (point 15); thence in a southerly and westerly direction with the city limit line of Concord, N.C. to the point of beginning.

Sec. 3. The boundaries of the Cold Water Fire District in Cabarrus County are as follows:

Beginning at a point (1) in the southern limits line of the city of Concord, N.C. on Three Mile Branch and running with Three Mile Branch in a southerly direction to a point (2) at Cold Water Creek; thence in a southerly direction with Cold Water Creek to a point (3) at Little Cold Water Creek ; thence in an easterly direction to a point (4) on N.C. Highway 49, 200 feet west of its intersection with Cold Springs Rd. (2411) [said point being at the line of Mt. Pleasant Volunteer Fire District]; thence in a northerly direction along with the line of Mt. Pleasant Volunteer Fire District to a point (5) on N.C. Highway 73, being 700 feet west from Adams Creek; thence in a northerly direction to a point (6) at the intersection of St. Johns Church Road (2414) and Cress Rd. (2415); thence due north to a point (7) on the Rimer Fire District Line 4000 feet east of Gold Hill Rd. (2408), including property on Baucom Rd. between this and the preceeding point; thence westerly along the Rimer Fire District line to a point (8) in Gold Hill Rd. (2408) being 200 feet southwest of its crossing of Dutch Buffalo Creek; thence in a northwesterly direction to a point (9) on Irish Potato Rd. (2400) 1.35 mile from its intersection with Gold Hill Rd. (2408); thence in a westerly direction to a point (10) on Sapp Rd. (2402), 0.1 mile north of its crossing of Little Buffalo Creek; thence in a northwesterly direction to a point (11) in Old Salisbury Rd. (1002), 1.05 mile north from its intersection with Sapp Rd. (2402); thence in a westerly direction to a point (12) at the intersection of Centergrove Rd. (2014) and Hilton Lake Rd.(2116); thence in a southwesterly direction to a point (13) where it intersects with the Winecoff Volunteer Fire District, 500 feet north of Burrage Rd. at the Concord City Limits; thence in a southerly direction with the city limits line of the City of Concord, N.C. to the point of beginning.

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Sec. 4. The boundaries of the Enochville Fire District in Cabarrus County are as follows:

Beginning at point (1) at the intersection of Enochville Ave. (1351) and Campbell Rd. (1352); thence in a northeasterly direction to point (2) on Saw Rd. (1350) at the bridge over Irish Buffalo Creek; thence in a southeasterly direction to point (3) on Cannon Farm Rd. (1197) 0.5 mile east of the bridge over Irish Buffalo Creek; thence in a northeasterly direction to point (4) on N.C. Highway 153 at the Landis Town limits; thence southerly along the Landis Town limits to point (5) at the Kannapolis City limits and Landis Town limits; thence continuing southerly along Kannapolis City to point (6) on the

Kannapolis City boundry north of Derbyshire Rd. (); thence in a westerly direction to a point (7) on Rogers Lake Rd. (1625) 0.6 mile east of its intersection with Boy Scout Camp Rd. (1624); thence in a westerly direction to a point (8) on Boy Scout Camp Rd. (1624) 0.5 mile north of its intersection with Dogwood Blvd. (1838); thence in a westerly direction to a point (9) on Trinity Church Rd. (1803) at its intersection with Drakestone Rd. (1622); thence in a westerly direction to a point (10) on Stirewalt Rd. (1616) 0.2 mile northeast of its intersection with Trinity Church Rd. (1803); thence in a northerly direction to a point (11) on Mooresville Rd. (1609) at Mill Creek; thence in a northwesterly direction to a point (12) on Tuckaseegee Rd. (1616) at its intersection with Oxford Rd. (); thence in a northwesterly direction to a point (13) on Plum Rd. (1615) 0.1 mile west of its bridge over Park Creek; thence in a northerly direction to point (14) on Wright Rd. (1363), 0.2 mile Northwest of the bridge over Back Creek; thence in a northerly direction to point (15) at the intersection of Smith Rd. (1360) and Wright Rd. (1359); thence in an easterly direction to the point of beginning.

Sec. 5. The boundaries of the Flowes Store Fire District in Cabarrus County are as follows:

Beginning at a point (1) on Flowes Store Rd. (1132) at the bridge over Rocky River; thence in an easterly direction, following Rocky River to a point (2) on U.S. 601; thence in a southerly direction along U.S. 601 to a point (3), 500 feet south of its intersection Parks Lafferty Rd. (1148), excluding all property 500 feet west of U.S. 601 between this and the preceeding point; thence in a southerly direction along U.S. 601 to a point (4) 500 feet south of its intersection with Joyner Rd. (1105); thence in a southerly direction along U.S. 601 to a point (5), 0.3 mile south of its intersection with Flowes Store Rd. East (1147), including all property 1500 feet east of U.S. 601 between this and the previous point; thence in a southerly direction along U.S. 601 to a point (6), at its intersection with Cal Bost Rd. (1143); thence in a westerly direction along Cal Bost Rd. (1143) to a point (7) at its intersection with Troutman Rd. (1145); thence in a southerly direction along Troutman Rd. (1145) to a point (8) where it crosses Anderson Creek, including all property 1000 feet east of Troutman Rd. (1145) between this and the preceeding point; thence southwestery along Anderson Creek and Horton Branch to a point (9), where Sam Black Rd. (1127) crosses Horton Branch; thence in southwestery direction to a point (10) on N.C. 27, 1000 feet east of its intersection with Flowes Store Road (1132); thence in a southwestery direction to a point (11) on Flowes Store Rd. (1132) 0.5 mile south of its

intersection with N.C. 27; thence southwesterly along Flowes Store Rd. (1132) to a point (12) on Flowes Store Rd. (1132) at the Cabarrus-Mecklenburg County Line; thence northeasterly along the Cabarrus-Mecklenburg County Line to a point (13) on Lower Rocky River Rd. (1136) at the Cabarrus-Mecklenburg County Line; thence in a northerly direction to a point (14) at the intersection of Lower Rocky River Rd. (1136) and Hickory Ridge Rd. (1138); thence in a northeasterly direction to a point (15) on Lower Rocky River Rd. (1136) at the Reedy Creek bridge; thence in a northerly direction to Rocky River and continuing along the river to the point of beginning.

Sec. 6. The boundaries of the Georgeville Fire District in Cabarrus County are as follows:

Beginning at a point (1) on the Cabarrus- Stanly county line; thence following the County Line northeasterly to a point (2) where Barrier Store Rd. (2622) crosses the Cabarrus- Stanly County line; thence in a northwesterly direction to a point (3) on Cauble Rd. (2616) 0.3 mile north of its intersection with Barrier Store Rd. (2622); thence in a northwesterly direction to a point (4) on Barrier Store Rd. (2622) 0.1 mile southeast of its intersection with Hahn Scott Rd. (2617); thence in a westerly direction to a point (5) on Barrier-Georgeville Rd. 0.2 mile south of its intersection with Barrier Store Rd. (2622); thence in a southwesterly direction to a point (6) on Mount Pleasant Rd. (1006) 0.3 mile northwest from its intersection with Miami Church Rd. (1132); thence in a northwesterly direction along the Mt. Pleasant Fire District line to a point (7) on said line 1000 feet east of Joe Bost Rd. (2627); thence in a southerly direction to a point (8) on Miami Church Rd. (1132) 1000 feet east of its intersection with Joe Bost Rd. (2627), excluding property 1000 feet east of Joe Bost Rd (2627) and Silverhaven Estates between this and the preceding point; thence in a southwesterly direction to a point (9) on N.C. Highway 200 1.6 mile northwest of its intersection with Mount Pleasant Rd. (1006); thence in southwesterly direction to a point (10) on U.S. Highway 601, 500 feet south of its intersection with Parks Lafferty Rd. (); thence in a southerly direction to a point (11) on U.S. 601, 0.1 mile south of its intersection with Joyner Rd. (1105); thence in an easterly direction to a point (12) on Mount Pleasant Rd. (1006) 0.2 mile south of its intersection with Joyner Rd. (1105); thence due south to a point (13) where Bost Creek enters Rocky River; thence in a southerly direction following Rocky River to a point (14) where Meadow Creek enters Rocky River; thence in a northeasterly direction along Meadow Creek to a point (15) on the Cabarrus- Stanly County line; thence in a northeasterly direction with

the Cabarrus- Stanly County line to the point of beginning.

Sec. 7. The boundaries of the Gold Hill Fire District in Rowan and Cabarrus Counties are as follows:

Beginning at a point (1) on St. Peters Church Rd. (2370) 0.4 mile south of its intersection with Hill Rd. (2366) and proceeding southeasterly to a point (2) at the west west end of a new grade road thence along said road approximatly 0.3 mile to a point (3) at its intersection with Liberty Rd. (2140) 2.7 miles from West Liberty Fire Department and proceeding east to a point (4) at the intersection of Barber Rd. (2364) with Morgan Rd. (2142) thence northeasterly to a point (5) on High Rock Rd. (2143) at Flat Creek, being approximately 1 mile southwest of High Rock Rd. (2143) and Stokes Ferry Rd. (1004); thence in a southerly direction to a point (6) on Old Beatty Ford Rd. (2356) at the point of Riles Creek Crossing said road; thence in a southwesterly direction to a point (7) on U. S. Highway 52 at the Cabarrus- Rowan County line; thence in a southwesterly direction to a point (8) on Short Cut Rd. (2455) 0.4 mile northwest of its intersection with Mattons Grove Church Rd. (2456); thence southerly to a point (9) on Mattons Grove Church Rd. (2456) 0.2 mile east of its intersection with Short Cut Rd. (2455); thence southwesterly to a point (10) at the intersection of Short Cut Rd. (2455) and Gold Hill Rd. East (2450); thence westerly to a point (11) on Shelly Rd. (2452) 0.5 mile north of its intersection with Culp Rd. (2452); thence westerly to a point (12) at the intersection of St. Stevens Church Rd. (2444) and Klutz Rd. (2435); thence southwesterly along St. Stevens Church Rd. (2444) to a point (13) to its intersection with Sansberry Rd. (2416), excluding property 500 feet west of St. Stevens Church Rd. (2444) between this and the preceeding point; thence to a point (14) on Little Buffalo Creek Rd. (2442) at the bridge over Little Buffalo Creek; thence northeasterly to a point (15) at the intersection of Mt. Olive Rd. (2446) and Cline Rd. (2447); thence in a northerly direction along Mt. Olive Rd. (2446) to a point (16) on Mt. Olive Rd. (2446) 0.2 mile north of its intersection with Klutz Rd. (2435); thence northwesterly and crossing the Rowan-Cabarrus County line to a point (17) on Oliver Rd. (2357) 0.6 mile west of its intersection with Emanuel Church Rd. (2338); thence in a northeasterly direction to a point (18) at the intersection of Emanuel Church Rd. (2338) and Old Beatty Ford Rd. (1221); thence in a northeasterly to a point (19) at the intersection of Eller Rd. (2346) and Gin Rd. (2347); thence along Gin Rd. (2347) in a northerly direction to a point (20) at the intersection of Gin Rd. (2347) and George Brown Rd. (2348) thence in a northeasterly direction to a point (21) where Zion Church Rd. () intersects with U.S. Highway 52; thence in a northerly direction along

a line 500 feet west of St. Peter's Church Rd. (2370) to a point (22) which is 500 feet west of point (1) the beginning; thence east 500 feet to point (1) the beginning, including all lands within the bounds of this district.

Sec. 8. The boundaries of the Harrisburg Fire District in Cabarrus County are as follows:

Beginning at a point (1) at the intersection of U.S. 29 and Roberta Church Rd. (1310); thence southwesterly to a point (2) at the intersection Pitts School Rd. (1305) and Hedgemore Rd. (1433); thence to a point (3) on Morehead Rd. (1300), 0.1 mile south of its intersection with U.S. 29; thence southwesterly to a point (4) at the intersection of U.S. 29 and Hudsbeth Rd. (1302); thence southwesterly to a point (5) on U.S. 29 at the Cabarrus - Mecklenburg County line; thence southeasterly along the Cabarrus - Mecklenburg County line to a point (6) on Lower Rocky River Rd. (1136); thence to a point (7) at the intersection of Lower Rocky River Rd. (1136) and Hickory Ridge Rd. (1138); thence northeasterly to a point (8) on Lower Rocky River Rd. (1136) at the Reedy Creek Bridge; thence northerly to a point (9) on Rocky River; thence in a general northwesterly direction along Rocky River and Coddle Creek to a point (10) 0.5 mile northwest of the bridge on Roberta Rd. (1307); thence northerly to the point of beginning.

Sec. 9. The boundaries of the Jackson Park Fire District in Cabarrus County are as follows:

Beginning at point (1) on U.S. Highway 29 4500 feet north of its intersection with Roberta Church Rd., this point being at the southwest corner of the Concord City Boundries; thence southwesterly along U.S. Highway 29 to point (2) at its intersection with Roberta Church Road U.S. 29; thence in a southerly direction to point (3) in Coddle Creek, 0.5 miles northwest of the Coddle Creek Bridge on Roberta Mill Road; thence southeasterly along Coddle Creek to point (4) at Rocky River and Rocky River Road (1139); thence easterly along Rocky River to point (5) where Reedy Creek joins Rocky River; thence due north to a point (6) 500 feet west of Zion Church Rd. (1152); thence northerly along Zion Church Road (1152) and 500 feet west of said road to point (7) at the intersection with N.C. 49; thence northeasterly along N.C. 49, and 500 feet north of said road to a point (8) at Irish Buffalo Creek; thence northerly to point (9) on U.S. 601 Bypass at its intersection with Manor Ave. at Concord City Limits; thence following the Concord City Limits to the point of beginning.

Sec. 10. The boundaries of the Mt. Mitchell Fire District in Cabarrus County are as follows:

Beginning at a point (1) on Old Salisbury Rd. (1002), 0.1 mile north of its intersection with Cline Rd. (2570); thence in a northwesterly direction to a point (2) on Moose Rd. (1308), 0.4 mile east of its intersection with Goldfish Rd. (1348); thence in a northerly direction to a point (3) on Beatty Ford Rd. (1221), 0.5 mile east of its intersection with Goldfish Rd. (1348); thence in a westerly direction to a point (4) on Old China Grove Rd. (1238), 0.2 mile north of its intersection with Beatty Ford Rd. (1221); thence in southwesterly direction to a point (5) at the Kannapolis City Limit north of the north end of Washington Ln.; thence in a southerly direction following the Kannapolis City Limits to a point (6) south of the intersection of Dalewood Ave. and Hopedale St.; thence in a southwesterly direction to a point (7) on the Kannapolis City Limit at the northeast end of Valwood St. (2210); thence easterly and southerly along the Kannapolis City Limit to a point (8) at the corner of the Forrestbrook Subdivision southeast of the end of Windingbrook Rd.; thence due East to a point (9) in Cold Water Creek; thence in a southeasterly direction to a point (10) in Cold Water Creek at the Cold Water Fire District boundry, this point being approximately 9700 feet south east of the bridge over Cold Water Creek on Centergrove Rd. (2114); thence in an easterly direction to a point (11) at the intersection of Centergrove Rd. (2114) and Hilton Lake Rd. (2116); thence in an easterly direction to a point (12) on Old Salisbury Rd. (1002), 1.2 mile south of its intersection with Camp Julia Rd. (2119); thence in a southwesterly direction to a point (13) on Sapp Rd. (2402), 0.5 mile northeast of its intersection with Old Salisbury Rd. (1002); thence in an easterly direction to a point (14) where the middle fork of Little Cold Water Creek crosses a line from point (13) to a point on Irish Potato Rd. 1.0 mile south of Barrier Rd.; thence northeasterly along the middle fork of Little Cold Water Creek to a point (15) on Sapp Rd. (2402), 0.3 mile southwest of its intersection with Rimer Rd. (2400), including property on Sapp Rd. (2402) between this and the preceeding point; thence in a northerly direction to a point (16) on Irish Potato Rd. (2400), 0.6 mile southeast of the Cabarrus County Line; thence northerly to a point on the Cabarrus - Rowan County line; thence in a northwesterly direction to the point of beginning.

Sec. 11. The boundaries of the M.P.R. Fire District in Cabarrus County are as follows:

Beginning at point (1) on N.C. 73 and the Cabarrus-Stanly County line; thence northwesterly to point (2) at Little Bear Creek bridge on Lentz Harness Shop Road (2453); thence northwesterly to point (3) on Dutch Road (2604) at Butcher Creek; thence northwesterly to point (4) on N.C. 49 at the intersection with Little Buffalo Creek Road (2442); thence northerly and 500 feet west of Little Buffalo Creek Road (2442) to point (5) 0.7 miles north of the

intersection of N.C. 49; thence northwesterly to point (6) on Mt. Olive Road (2416) at its intersection with Fink Road (2441); thence southwesterly to a point (7) on Gold Hill Road (2408) 0.4 mile west of its intersection with Mt. Olive Rd. (2416); thence westerly to point (8) on Nellie Beaver Road (2426), 0.4 miles southwest of its intersection with Gold Hill Road (2408); thence northwesterly to point (9) on Mt. Pleasant Faith Road (1006) 1.4 miles north of the intersection with Mt. Olive Road (2416); thence southwesterly to point (10) on Cline School Road (2427) 0.7 miles north of the intersection with Cress Road (2415); thence westerly along the Rimer Fire District line to a point (11) on said line 4000 feet east of Gold Hill Rd. (2408); thence due south to a point (12) at the intersection of St. Johns Church Rd. (2414) and Cress Rd. (2415), excluding property on Baucom Rd. between this and the preceding point; thence southwesterly to point (13) on N.C. 73 0.1 mile west of Adams Creek Bridge; thence southerly to point (14) on Cold Springs Road (2411), 0.1 mile northwest of its intersection with N.C. 49; thence southeasterly to point (15) on N.C. 49, 0.1 mile southwest of the intersection with Cold Springs Road (2411); thence southeasterly to point (16) on Cold Springs Rd. South (2630), 0.2 miles southwesterly of the intersection with Cold Springs Road (2411); thence southeasterly to point (17) on Joe Bost Road (2627) 0.1 mile south of the intersection with Bost Cut Off Road (2626); thence southeasterly to point (18) on Mt. Pleasant Road (1006) 0.7 miles south of the intersection with Bost Cut Off Road (2626); thence northeasterly to point (19) on Barrier-Georgeville Road (1100) 0.2 miles south of the intersection with Barrier Store Road (2622); thence easterly to point (20) on Barrier Store Raod (2622) 0.1 mile southeast of the intersection with Hahn Scott Road (2617); thence easterly to point (21) on Cauble Rd. (2616) 0.3 mile south of Paige Rd. (2614); thence northeasterly to a point (22) on Paige Rd. (2614) 0.2 mile west of its intersection with T. Lewis Rd. (2615); thence easterly to a point (23) on Paige Rd. (2616) 0.4 mile east of its intersection with T. Lewis Rd. (2615); thence due east to a point (24) on the Cabarrus-Stanly County line; thence northeasterly along the Cabarrus-Stanly County Line to the point of beginning.

Sec. 12. The boundaries of the Northeast Cabarrus Fire District in Cabarrus County are as follows:

Beginning at a point (1) at the intersection of St. Stevens Church Rd. (2444) and Kluttz Rd. (2435); thence easterly to a point (2) on Shelly Rd. (2451), 0.5 mile north of its intersection with Culp Rd. (2452); thence easterly to a point (3) at the intersection of Short Cut

Rd. (2455) and Gold Hill Rd. east (2450); thence southerly along Gold Hill Rd. (2450), including property within 500 feet east, to a point (4) at the Cabarrus-Stanly County line; thence southwesterly along the Cabarrus-Stanley County line to a point (5) at N. C. Highway 73; thence northwesterly to a point (6) at Little Bear Creek Bridge on Lentz Harness Shop Rd. (2453); thence northwesterly to a point (7) on Dutch Rd. (2604) at Butcher Creek; thence northwesterly to a point (8) on N. C Highway 49 at its intersection with Little Buffalo Creek Rd. (2442) northerly and 500 ft. west; thence to a point (9) paralleling Little Buffalo Creek Rd. (2442) 0.7 mile north of its intersection with N. C. Highway 49; thence westerly to a point (10) on Mt. Olive Rd (2416) at its intersection with Fink Rd. (2441); thence northerly along Mt. Olive Rd. (2416) to a point (11) on Mt. Olive Rd. (2416) 0.2 mile north of its intersection with Fink Rd. (2441), including property 1000 feet west of Mt Olive Rd. (2416) between this and the preceding point; thence northerly to a point (12) on Mt Olive Rd. (2416) 0.2 mile south of its intersection with Vineyard Rd. (2439), excluding property 1000 feet east of Mt. Olive Rd. (2416) between this and the preceding point; thence northwesterly to a point (12) on Vineyard Rd. (2439) 0.2 mile west of its intersection with Mt. Olive Rd. (2416); thence northerly to a point (13) on Emmanuel Rd. (2445) at its intersection with Klutz Rd. (2435); thence north easterly to a point (14) on Mt Olive Rd. (2446) 0.2 mile north of its intersection with Klutz Rd. (2435); thence southerly along Mt. Olive Rd. (2446) to a point (15) at the intersection of Mt. Olive Rd. (2446) and Cline Rd. (2447); thence in a southeasterly direction to a point (16) on Little Buffalo Creek Rd. (2442) at the Little Buffalo Creek Bridge thence northeasterly to a point (17) at the intersection of Sansberry Rd. (2416) and St. Stevens Church Rd. (2444), thence northeasterly along St. Stevens Church Rd. (2444), including property within 500 feet of the west side, to the point of beginning.

Sec. 13. The boundaries of the Odell Fire District in Cabarrus County are as follows:

Beginning at a point (10 on N. C. Highway 73 at the Cabarrus-Mecklenburg County line; thence in a northwesterly direction along the Cabarrus-Mecklenburg County line to a point (2) at Rocky River; thence in a northerly direction to a point (3) on Davidson Rd. (1606), 0.5 mile east of the Cabarrus-Mecklenburg County line; thence to a point (4) on Mooresville Rd. (1609), 0.1 mile south of its intersection with Sugar Hill Rd. (1610); thence in an easterly direction to a point (5) on Earnhardt Rd. (1613) 0.6 mile northwest of its intersection with Seymore Ln. (); in an easterly direction to a point (6) on Alexander Rd. (1614) 0.2 mile north of its intersection with Boone's

Farm Rd. (); thence to a point (7) on Plum Rd. (1615) 0.1 mile west of its bridge over Park Creek; thence in a southeasterly direction to a point (8) on Tuckaseegee Rd. () and Oxford Rd. (); thence in a south easterly direction to a point on Mooresville Rd. (1609) at Mill Creek; thence in a southerly direction to a point (9) on Stirewalt Rd. (1616) 0.2 mile east of its intersection with Drakestone Rd. (1622); thence in a southerly direction to a point (10) on Drakestone Rd. (1622) 0.2 mile south of its intersection with Stirewalt Rd. (1616); thence in a southeasterly direction to a point (11) At the intersection of Barr Rd. (1621), excluding property on Trinity Church Dr. (1803) between this and the preceding point; thence in a southeasterly direction to a point (12) on NC Highway 73, 0.8 mile east of the bridge over Afton Run Creek at the Duke Power Company transmission line, including property in the Spring Valley Mobile Home Park between this and the preceding point; thence in a southwesterly direction along the Duke Power Company transmission lines to a point (13) at its intersection with Coddle Creek; thence in a southwesterly direction to a point (14) at the intersection of Odell School Rd. (1442) and Poplar Tent Rd (1394), including property on Untz Rd. (1444) between this and the preceding point; thence in a southwesterly direction to a point (15) on Derita Rd. (1445), 0.87 mile south of its intersection with Poplar Tent Rd. (1394); thence in a westerly direction to a point (16) on Cox Mill Rd. (1448), 0.8 mile south of its intersection with Poplar Tent Rd. (1394); thence in a westerly direction to a point (17) on Ellenwood Rd. (1461), 0.1 mile south of its intersection with Harris Rd. (1449); thence in a westerly direction to a point (18) on Harris Rd. (1449) at the Cabarrus-Mecklenburg County line; thence in a northerly direction along the Cabarrus-Mecklenburg County line to the point of beginning.

Sec. 14. The boundaries of the P.S.R. Fire District (PSR Fire District) in Cabarrus County are as follows:

Beginning at a point (1) at the intersection of Coddle Creek and the Transmission line of Duke Power Company; thence in a southerly direction to a point (2) at the intersection of Woodhaven Rd. (1441) and Poplar Tent Rd. (1394), including property on Goodman Rd. (1441) and Woodhaven Rd. (1441); thence in a southwesterly direction to a point (3) at the intersection of Weddington Rd. (1431) and Concord Farms Rd. (1432); thence in a southeasterly direction to a point (4) at the intersection of U. S. Highway 29 and Roberta Church Rd. (1310); thence in a southwesterly direction to a point (5) at the intersection of Pitts School Rd. (1305) and Hedgemore Rd. (1433), excluding property on Hedgemore Rd. (1433); thence in a

southwesterly direction to a point (6) on Morehead Rd. (1300), 0.1 mile southeast of its intersection with U. S. Highway 29; thence in a southwesterly direction to a point (7) at the intersection of U. S. Highway 29 and Hudspeth Rd. (1302); thence in a southwesterly direction to a point (8) on U. S. Highway 29 at the Cabarrus-Mecklenburg County line; thence in a northwesterly direction along the Cabarrus-Mecklenburg County line to a point (9) on Interstate 85 at the Cabarrus-Mecklenburg County line; thence in a northwesterly direction to a point (11) on Derita Rd. (1445) 0.5 mile south of Altacrest Dr. (); thence in a northly direction to a point (12) on Derita Rd. (1445) 0.8 mile south of its intersection with Poplar Tent Rd. (1394); thence in a northwesterly direction to a point (11) at the intersection of Poplar Tent Rd. (1394) and Odell School Rd. (1442), including all property on Ivey Cline Rd. (1439); thence in a northwesterly direction to point (1), the point of beginning, excluding property on Untz Rd. (1444).

Sec. 15. The boundaries of the Poplar Tent Fire District in Cabarrus County are as follows:

Beginning at a point [1] on U.S. Highway 29, 200 feet south of its intersection with Lisk Ave.; thence in a northerly direction along US Highway 29 and the Concord City limits to a point (2) on US Highway 29 200 feet north of its intersection with Parkway Dr.; thence westerly to a point (3) in the center of Buffalo Creek, (on the west side of U.S. Highway 29); thence running northwesterly along the course of Buffalo Creek to a point [4] 500 feet south of N.C. Highway 73 on Buffalo Creek; thence westerly along a line 500 feet south of and parallel with N.C. Highway 73, excluding all dead end roads entering N.C. Highway on the south side, continuing westerly in the same course 500 feet south of and parallel with N.C. Highway 73 to a point [5] at the center of the right-of-way for Duke Power Company transmission lines (just west of the N.C. Highway 73 and Interstate 85 interchange); thence running southwesterly with said Duke Power Company right-of-way to a point [6] at the center of Coddle Creek where the transmission lines cross Coddle Creek; thence along an imaginary line in a southerly direction to a point [7] at the intersection of Goodman Rd. (1441) and Poplar Tent Rd. (), (0.3 mile east of Poplar Tent Presbyterian Church); thence in a southeasterly direction along an imaginary line to a point [8] at the intersection of Weddington Rd. and Arbor Acres Rd. (1432); thence running east southeast, to a point [9] on U.S. Highway 29 at its intersection with Roberta Church Rd. (); thence northerly along US Highway 29 and the Concord City Limits to the point of beginning.

Sec. 16. The boundaries of the Richfield Misenheimer Fire District in Stanly, Cabarrus, and Rowan Counties are as follows:

Beginning at a point (1) on N.C. Highway 49 four (4) miles west of fire station, this being 0.6 mile west of the Stanly-Cabarrus County line; thence northeast for 3.3 miles to a point (2) on U.S. Highway 52 at the Cabarrus-Rowan line; thence 2.4 miles to the intersection of Reeves Island (an Extension in Rowan of Zion Church Rd. in Stanly and Beatty's Ford Rd.); thence East with Beatty's Ford Rd. 1.0 mile to intersection with Stokes Ferry Rd.; thence southeast with Stokes Ferry Rd. 2.0 miles to Riles Creek bridge; thence south 0.3 mile with the course of the creek to the Stanly County line; thence east 0.5 mile with the Stanly-Rowan County line to Heglar Rd.; thence south 0.4 mile with Heglar Rd. to intersection with N.C. Highway 49; thence west 0.2 mile with Highway 49 to intersection with N.C. Highway No. 8; thence with the New London Fire District line south 2.3 mile to a point on the old New London Rd. 0.3 mile south of bridge over Gold Branch; thence south 0.6 to the intersection of Parker Church Rd. and U.S. Highway 52; thence 0.4 mile southeast with Parker Church Rd. to intersection with Danville Rd.; thence south with Danville Rd. 1.3 mile to the intersection with Old Albemarle Rd.; thence south with Old Albemarle Rd. 0.3 mile to intersection with Parker Mine Rd.; thence with Parker Mine Rd. 0.2 mile west to intersection with Moss Rd.; thence south with Moss Rd. 0.6 mile to intersection with Burris Rd.; thence west with Burris Rd. 0.5 mile to intersection with Kendall's Church Rd.; thence south 1.0 mile with Kendall's Church Rd. to intersection with Rogers Rd.; thence northwest 1.0 mile to a point on Burris Rd. 0.5 mi east of intersection of Burris Rd. with Millingport Rd.; thence west 0.6 mile to intersection of Millingport Rd. and Rogers Rd.; thence northwest 0.8 mile to a point on Brooks Road 1.0 miles west of intersection of intersection of Brooks Rd. and Millingport Rd.; thence west 0.7 mile to a point on Paul's Crossing Rd. 0.2 mile north of intersection of Paul's Crossing Rd. and Rogers Rd.; thence north 1.3 mile to a point on Ridenhour Rd. 0.6 mile south of intersection of Ridenhour Rd. with N.C. Highway 49; thence west 1.2 mile to the point of beginning.

Sec. 17. The boundaries of the Rimer Fire District in Cabarrus County are as follows:

Beginning at a point [1] where the Mount Pleasant Faith Road crosses the Cabarrus-Rowan County line; thence in a easterly direction to a point [2] on Rockwell Rd. (2437) at the Cabarrus-Rowan County line; thence in a southeasterly direction to a point [3] on Kluttz Rd. (2435) at its intersection with Emmanuel Rd. (2445); thence in a southwesterly direction to a point [4] on Bostian Fisher Rd. (2438)

0.2 mile east of Rockwell Rd. (2437); thence in a southerly direction to a point [5] on Vineyard Rd. (2439) 1.2 miles east of its intersection with Gold Hill Rd. (2408); thence in a southerly direction to a point [6] on Gold Hill Rd. (2408) 0.4 mile west of its intersection with Mt Olive Rd. (2446); thence in a westerly direction to a point [7] on Nellie Beaver Rd. (2426) 0.4 mile south of its intersection with Gold Hill Rd. (2408); thence in a westerly direction to a point [8] on Mount Pleasant Faith Road 1.3 miles south of its intersection with Gold Hill Road (at Mt. Pleasant Rural Fire District line); thence in a southwesterly direction to a point [9] on Cline School Road (2427) 1.3 miles south of its intersection with Gold Hill Road; thence in a westerly direction to a point [10] on Gold Hill Road 0.1 mile west of the bridge over Dutch Buffalo Creek; thence in a northwesterly direction to a point [11] on Irish Potato Road (2411), 1.0 mile south of its intersection with Barrier Road; thence in a westerly direction to a point [12] where the middle fork of Little Buffalo Creek crosses a line from point [11] to a point on Sapp Rd. (2402), 0.5 mile northeast of its intersection with Old Salisbury Rd. (1002); thence northerly along the middle fork of Little Gold Water Creek a point [13] Sapp Rd. (2402) 0.3 mile southwest of its intersection with Irish Potato Rd. (2400); thence in a northwesterly direction to a point [14] on Irish Potato Road (2400) about 0.2 miles north of its intersection with Sapp Rd. (2402); thence directly north to a point on the Cabarrus-Rowan County line; thence in an easterly direction with the County line to the point of beginning.

Sec. 18. The boundaries of the Winecoff Rated Fire District in Cabarrus County are as follows:

Beginning at a point (1) at the intersection of Springway Dr. (1849) and South Main Street (US 29A) ; thence northerly to a point (2) on South Main St (US 29A) 200 feet north of Greenview Dr.; thence easterly to a point (3) on South Ridge Ave. 200 feet south of Little St.; thence northerly along the Kannapolis City boundary to a point (4) 300 feet south on Dakota Street ; thence easterly along the Kannapolis City Boundary to a point (5) on Dakota Street at Three Mile Branch; thence southerly along Three Mile Branch to a point (6) where Three Mile Branch crosses under US Highway 29; thence southerly along US Highway 29 to a point (7) where the Kannapolis and Concord City boundaries meet on US Highway 29; thence southwesterly along the Concord City Boundary to a point (8) on Kannapolis Highway (US 29A) at the bridge over interstate 85; thence following the Concord City boundry to a point (9) on US Highway 29, 200 feet north of Parkway Dr. (1401); thence westerly to a point (10) at Buffalo Creek thence northwesterly along Buffalo Creek to a point

(11) at NC Highway 73; thence westerly along and 500 feet south of NC Highway 73 to a point (12) at the intersection of NC Highway 73 and Trinity Church Rd. (1622), including property on all dead end roads off NC Highway 73 between this and the proceeding point; thence northwesterly to a point (13) at the intersection of Trinity Church Rd. (1622) and Barr Rd. (1621); thence in a northwesterly direction to a point (14) on Trinity Church Dr. (1803) 0.2 mile west of its intersection with Trinity Church Rd. (1622) thence northeasterly to a point (15) on Trinity Church Rd. (1622) 0.2 mile north of its intersection with Trinity Church Dr. (1803); thence northeasterly to a point (16) on Boy Scout Camp Rd. (1624) 0.5 mile north of its intersection with Dogwood Blvd. (1838) thence northeasterly to a point (17) on Rogers Lake Rd. (1625) 0.6 mile east of its intersection with Boy Scout Camp Rd. (1624); thence in an easterly direction to a point (18) at the Kannapolis City boundry north of Derbyshire Rd. (); thence in a southeasterly direction along the Kannapolis City Boundry to the point of beginning.

Also including an area west of Kannapolis more specifically: beginning at a point (1) on NC Highway 136 200 feet south of its intersection with Earnhardt Rd. (2126); thence northeasterly along the Kannapolis City boundry to a point (2) at on the Kannapolis City Boundry at the corner of the Forrestbrook Subdivision northwest of the cul-de-sac at the end of Windingbrook Dr.; thence due east to a point (3) in Cold Water Creek; thence in a south easterly direction to a point (4) in Cold Water Creek at the Cold Water Fire District Line, this point being approximately 9700 feet southeast of the bridge over Cold Water Creek on Centergrove Rd.(2114); thence in a southwesterly direction along the Cold Water Fire District boundry to a point (5) at the Concord City boundry; thence northerly and northwesterly along the Concord city boundries to a point (6) on Lake Concord Rd. (NC 136); thence northerly the Kannapolis City boundry to the point of beginning.

Sec. 19. Notwithstanding the provisions of Sections 4, 10, and 18 of this act, or Chapter 69 of the General Statutes, the area within the corporate limits of the City of Kannapolis is removed from any fire district.

Sec. 20. This act shall become effective June 30, 1988.

In the General Assembly read three times and ratified this the 6th day of July, 1987.

H.B. 688

CHAPTER 559

AN ACT TO AMEND THE PESTICIDE LAW.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143-439(b) is rewritten as follows:

"(b) The Pesticide Advisory Committee shall consist of 19 members to be appointed by the Board as follows: three practicing farmers; one conservationist (at large); one ecologist (at large); one representative of the pesticide industry; one representative of agribusiness (at large); one local health director; three members of the North Carolina State University School of Agriculture and Life Sciences, at least one of which shall be from the area of wildlife or biology; one member each representing the North Carolina Department of Agriculture, the North Carolina Department of Human Resources, and the North Carolina Department of Natural Resources and Community Development; one representative of a public utility or railroad company which uses pesticides, or of the Board of Transportation; one member of the North Carolina Agricultural Aviation Association; one member of the general public (at large); one member actively engaged in forest pest management; and one member representing the Solid and Hazardous Waste Management Branch, Environmental Health Section, Division of Health Services, Department of Human Resources."

Sec. 2. Wherever the term "restricted-use" appears in Article 52 of Chapter 143 of the General Statutes, the same is hereby amended by deleting the hyphen therefrom.

Sec. 3. G.S. 143-442(a) is amended by inserting the following new sentence between the first and second sentences thereof:

"Beginning in 1988, the Board may by rule adopt a system of staggered three-year registrations."

Sec. 4. G.S. 143-442(a) is amended by deleting the word "and" following subdivision (3) and by rewriting subdivision (4) and adding new subdivisions (5) and (6) as follows:

"(4) if requested by the Board, a full description of the tests made and the results thereof upon which the claims are based;

(5) in the case of renewal of registration, a statement with respect to information which is different from that furnished when the pesticide was last registered; and

(6) a Material Safety Data Sheet for the pesticide".

Sec. 5. G.S. 143-442(b) is amended in the second sentence thereof by deleting the phrase "twenty-five dollars (\$25.00)" and inserting in lieu thereof the phrase "one hundred dollars (\$100.00)"; and is further amended by adding the following new sentence at the end thereof:

"In the case of multi-year registration, the annual fee for each year shall be paid at the time of the initial registration, provided that a pro rata refund of the registration fee shall be made to the registrant in the

event that registration is canceled by the North Carolina Pesticide Board or by the United States Environmental Protection Agency."

Sec. 6. G.S. 143-442(d) is amended by rewriting the first sentence thereof as follows:

"If the pesticide is properly registered with the United States Environmental Protection Agency and is in compliance with the requirements of G.S. 143-443, the Board shall register the pesticide."; and is further amended by inserting the phrase "Provided, however, that" at the beginning of the second sentence thereof.

Sec. 7. .S. 143-442 is amended by adding a new subsection (j) at the end thereof as follows:

"(j) Each manufacturer, distributor or registrant of a pesticide shall supervise the activities of any employee or agent to prevent the making of deceptive or misleading statements about the pesticide."

Sec. 8. G.S. 143-443(b) is amended by adding a new subdivision (5) as follows:

"(5) For any person to distribute, sell or offer for sale any restricted use pesticide to any dealer who does not hold a valid North Carolina Pesticide Dealer License."

Sec. 9. G.S. 143-446(b) is amended by inserting the following new sentence between the first and second sentences thereof:

"Official samples shall be collected from material that has been packaged, labeled and released for shipment."

Sec. 10. G.S. 143-447(b) is amended by deleting the last two sentences of that subsection; and is further amended by adding the following new sentence at the end thereof:

"The Board may issue a 'stop sale, use or removal order' to prevent or stop the use of a pesticide in a manner inconsistent with its labeling or to prevent or stop the disposal of a pesticide or a pesticide container in violation of this Article or the rules of the Board adopted thereunder."

Sec. 11. G.S. 143-448(b) is amended in the second sentence thereof by inserting the following between the word "a" and the word "fee": "non-refundable".

Sec. 12. The title of Part 3 of Article 52, Chapter 143 of the General Statutes is amended by deleting the phrase "and Manufacturers" therefrom.

Sec. 13. G.S. 143-451(a) is amended by changing the period at the end of subdivision (12) to a semicolon and adding a new subdivision (13) as follows:

"(13) Provided or made available any restricted use pesticide to any person other than a certified private applicator, licensed pesticide applicator, certified structural pest control applicator, structural pest control licensee or an employee under the direct supervision of one of the aforementioned certified or licensed applicators."

Sec. 14. G.S. 143-452(b) is amended in the second sentence thereof by inserting the following between the word "a" and the word "fee": "non-refundable".

Sec. 15. G.S. 143-452(h) is repealed.

Sec. 16. G.S. 143-455(a) is amended in the third sentence thereof by deleting the word "an" and inserting in lieu thereof the phrase: "a non-refundable".

Sec. 17. G.S. 143-456(a) is amended by deleting the word "registered" appearing immediately before the word "employee"; and is further amended in subdivision (14) by deleting the phrase "label or adopted regulations" and inserting in lieu thereof the phrase "labeling or by rule".

Sec. 18. G.S. 143-460 is amended by adding the following new subdivision:

"(22a) 'Material Safety Data Sheet' or 'MSDS' means a chemical information sheet which would satisfy the requirements of the Hazardous Chemicals Right-to-Know Act, Article 18, Chapter 95 of the General Statutes, or any law enacted in substitution therefor."

Sec. 19. G.S. 143-460 is amended by adding the following new subdivision:

"(25a) The phrase 'packaged, labeled and released for shipment' means the point in the production and marketing process of a pesticide where the pesticide has been produced, and it is the intent of the producer that such product be introduced into commerce for direct retail sale"; and is further amended in subdivision (29) by deleting the word "private" appearing immediately before the words "golf course".

Sec. 20. G.S. 143-460(35) is rewritten to read:

"(35) The term 'restricted use pesticide' or 'pesticide classified for restricted use' means any pesticide or use classified as restricted by the Administrator of the United States Environmental Protection Agency or other pesticide or use which the Board has designated as such pursuant to G.S. 143-440."

Sec. 21. G.S. 143-469(b) is amended by deleting the word "or" at the end of subdivision (9); changing the period at the end of subdivision (10) to a semicolon; and adding the following new subdivisions at the end thereof:

"(11) Makes any restricted use pesticide available for use by any person other than a certified private applicator, licensed pesticide applicator, certified structural pest control applicator, or structural pest control licensee or an employee working under the direct supervision of such applicator or licensee.

(12) Distributes, sells or offers for sale any restricted use pesticide to any dealer who does not hold a valid North Carolina Pesticide Dealer License."

Sec. 22. This act shall become effective October 1, 1987.

In the General Assembly read three times and ratified this the 6th day of July, 1987.

H.B. 792

CHAPTER 560

AN ACT TO ALLOW ROBESON COUNTY TO CREATE FIRE DISTRICTS.

The General Assembly of North Carolina enacts:

Section 1. Article 3A of Chapter 69 of the General Statutes is amended by adding a new section to read:

" § 69-25.18. *Election to be held in area of such size as to qualify as a rated district in accordance with regulations of the State Commissioner of Insurance.*--(a) The Board of County Commissioners may establish a Fire District with boundary lines within a radius of the location or proposed location of building that will be used as Fire Department so as to qualify the entire area as a Rated District in accordance with regulations of the Commissioner of Insurance if upon the information and evidence it receives the board finds that:

- (1) There is a demonstratable need for providing fire protection in the district;
- (2) It is economically feasible to provide fire protection in the district without unreasonable or burdensome annual tax levies; and
- (3) There is a demonstratable demand for fire protection from persons residing in the district.

Territory lying within the corporate limits of a city or town may not be included unless the governing body of the city or town agree by resolution to such inclusion.

(b) Board of Commissioners shall cause a general description to be prepared using natural boundaries such as roads, rivers and streams when possible and boundaries shall be plotted on current maps of the county obtained from North Carolina Department of Transportation, and the description shall also be prepared in written form.

(c) That the Board of Commissioners shall cause notice of intent to establish the district and copies of the description of the district with the name of the district as proposed by residents of the district to be circulated in the district and no less than two public meetings relating to the formation of the district shall be held within the district.

(d) A copy of a county map with district lines shown thereon and written description of district lines shall be on file in the office of Director of Emergency Services and/or Fire Marshall for the county and if an election is to be held in the district for a special tax for fire protection as hereinafter provided in subsection (e) copies shall be filed in the office of the Board of Elections for the county; provided that copies in both offices shall be available for public inspection during regular office hours.

(e) Upon petition by such number or percentage of registered voters residing in the district as may be required by resolution of Board of Commissioners, which petition should designate the name of the district and be certified by the office of the Board of Elections as containing the required number of registered voters residing in district the Board of Commissioners of the county shall call an election in the district for the purpose of submitting to the qualified voters therein the question of levying and collecting a special tax on all taxable property in said district, of not exceeding fifteen cents (15¢) on the one hundred dollars (\$100.00) valuation of property, for the purpose of providing fire protection in said district. If the voters reject the special tax then no new election may be held within two years on the question of levying and collecting a special tax under this section in that district, or in any proposed district which includes a majority of the land within the district in which the tax was rejected.

(f) The procedures set out in Article 3A of Chapter 69 of General Statutes for conduct of elections and form of ballot shall be followed in elections held under this section.

(g) Upon a petition of registered voters residing in district complying with requirements of subsection (e) at intervals of not less than two years, the Board of County Commissioners shall call an election to abolish the special tax for fire protection for the area in the district. The election shall be called and conducted as hereinabove provided in subsection (e); if the majority of the registered voters in the district vote to abolish the tax, the Commissioners shall cease the levy and collection of same and any unused funds of the district shall be turned over to and used by the county collecting the same as a part

of its general fund.

(h) That except for the provisions of G.S. 69-25.1 and G.S. 69-25.10 the provisions of this Article shall apply to Rated Fire Protection Districts created under this section.

(i) All prior Fire Protection Districts created in substantial compliance with this section are hereby approved, confirmed, validated and declared to be proper, authorized and legal; that all prior appropriations and expenditures by any county board of commissioners derived from taxes levied in fire protection districts so created are hereby approved, confirmed, validated and declared to be proper, authorized and legal."

Sec. 2. This act applies to Robeson County only.

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 6th day of July, 1987.

H.B. 817

CHAPTER 561

AN ACT TO AUTHORIZE LENOIR COUNTY TO LEVY A ROOM OCCUPANCY AND TOURISM DEVELOPMENT TAX.

The General Assembly of North Carolina enacts:

Section 1. Occupancy Tax. (a) Authorization and scope. The Lenoir County Board of Commissioners may by resolution, after not less than ten days' public notice and after a public hearing held pursuant thereto, levy a room occupancy tax of three percent (3%) of the gross receipts derived from the rental of any room, lodging, or similar accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within the county that is subject to sales tax imposed by the State under G.S. 105-164.4(3). This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations, by summer camps, or by businesses that offer to rent no more than five units.

(b) Collection. Every operator of a business subject to the tax levied under this section shall, on and after the effective date of the levy of the tax, collect the tax. This tax shall be collected as part of the charge for furnishing a taxable accommodation. The tax shall be stated and charged separately from the sales records, and shall be paid by the purchaser to the operator of the business as trustee for and on account of the county. The tax shall be added to the sales price and shall be passed on to the purchaser instead of being borne by the operator of the business. The county shall design, print, and furnish

to all appropriate businesses and persons in the county the necessary forms for filing returns and instructions to ensure the full collection of the tax.

(c) Administration. The county shall administer a tax levied under this section. A tax levied under this section is due and payable to the county finance officer in monthly installments on or before the 15th day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the 15th day of each month, prepare and render a return on a form prescribed by the county. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied.

A return filed with the county finance officer under this section is not a public record as defined by G.S. 132-1 and may not be disclosed except as required by law.

(d) Penalties. A person, firm, corporation, or association who fails or refuses to file the return required by this section shall be subject to and pay a penalty of ten dollars (\$10.00) for each day's omission. In case of failure or refusal to file the return or pay the tax for a period of 30 days after the time required for filing the return or for paying the tax, there shall be an additional tax, as a penalty, of five percent (5%) of the tax due in addition to any other penalty, with an additional tax of five percent (5%) for each additional month or fraction thereof until the tax is paid.

Any person who willfully attempts in any manner to evade a tax imposed under this section or who willfully fails to pay the tax or make and file a return shall, in addition to all other penalties provided by law, be guilty of a misdemeanor and shall be punishable by a fine not to exceed one thousand dollars (\$1,000), imprisonment not to exceed six months, or both.

(e) Distribution and use of tax revenue. Lenoir County shall, on a monthly basis, remit the net proceeds of the occupancy tax to the Lenoir County Tourism Development Authority. The Authority may spend funds remitted to it under this subsection only to further the development of travel, tourism, and conventions in Lenoir County through advertising and promotion, to sponsor tourist-oriented events and activities in Lenoir County, and to finance tourist-related capital projects in Lenoir County. As used in this subsection, "net proceeds" means gross proceeds less the cost to the county of administering and collecting the tax, which may not exceed five percent (5%) of the gross proceeds.

(f) Effective date of levy. A tax levied under this section shall become effective on the date specified in the resolution levying the tax. That date must be the first day of a calendar month, however, and may not be earlier than the first day of the second month after the date the resolution is adopted.

(g) Repeal. A tax levied under this section may be repealed by a resolution adopted by the Lenoir County Board of Commissioners. Repeal of a tax levied under this section shall become effective on the first day of a month and may not become effective until the end of the fiscal year in which the repeal resolution was adopted. Repeal of a tax levied under this section does not affect a liability for a tax that was attached before the effective date of the repeal, nor does it affect a right to a refund of a tax that accrued before the effective date of the repeal.

Sec. 2. Tourism Development Authority. (a) Appointment and membership. When the board of commissioners adopts a resolution levying a room occupancy tax under this act, it shall also adopt a resolution creating the Lenoir County Tourism Development Authority, which shall be a public authority under the Local Government Budget and Fiscal Control Act. The resolution shall provide that the Authority shall be composed of the following seven members:

- (1) A Lenoir County Commissioner appointed by the board of commissioners;
- (2) A member of the Kinston City Council appointed by the city council;
- (3) Three owners or operators of motels, hotels, or other taxable accommodations in Lenoir County that have at least 50 units, one of whom shall be appointed by the Kinston City Council, one by the Lenoir County Board of Commissioners, and one by the Lenoir County Chamber of Commerce; and
- (4) Two individuals involved in the tourist business who have demonstrated an interest in tourist development and do not own or operate hotels, motels, or other taxable tourist accommodations, appointed as follows: one by the Kinston City Council and one by the Lenoir County Board of Commissioners.

All members of the Authority shall serve without compensation. Vacancies shall be filled in the same manner as original appointments. Members appointed to fill vacancies shall serve for the remainder of the unexpired term. The Authority shall elect each year from its membership a chairman. No member may serve as chairman more than two one-year terms in succession. The Authority shall meet at the call of the chairman or of any three members and shall adopt rules

of procedure to govern its meetings. The Finance Officer for Lenoir County shall be the ex officio finance officer of the Authority.

(b) Terms of office. Members of the Authority shall serve three-year terms except that the initial appointees shall serve the following terms:

- (1) Members appointed pursuant to subdivisions (a)(1) and (a)(2) of this section shall serve one-year terms.
- (2) Of the members appointed pursuant to subdivision (a)(3) of this section, the appointee of the Kinston City Council shall serve a three-year term and the appointee of the board of commissioners shall serve a two-year term.
- (3) Of the members appointed pursuant to subdivision (a)(4) of this section, the appointee of the Kinston City Council shall serve a one-year term, the appointee of the board of commissioners shall serve a three-year term, and the appointee of the Chamber of Commerce shall serve a two-year term.

(c) Powers and duties. The Authority may contract with any person, firm, or agency to assist it in carrying out the purposes for which the tax proceeds levied by this act may be expended. The board of county commissioners may from time to time determine an appropriate percentage of net proceeds that may be expended for administrative services.

(d) Reports. The Authority shall report quarterly and at the close of the fiscal year to the board of county commissioners on its receipts and expenditures for the preceding quarter and for the year in such detail as the board may require.

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 6th day of July, 1987.

H.B. 936

CHAPTER 562

AN ACT TO PROVIDE A PROCEDURE FOR ANNEXATION OF MUNICIPAL PROPERTY.

The General Assembly of North Carolina enacts:

Section 1. G.S. 160A-31 is amended by adding a new subsection (g) to read:

"(g) The governing board may initiate annexation of contiguous property owned by the municipality by adopting a resolution stating its intent to annex the property, in lieu of filing a petition. The resolution shall contain an adequate description of the property, state that the property is contiguous to the municipal boundaries and fix a

date for a public hearing on the question of annexation. Notice of the public hearing shall be published as provided in subsection (c) of this section. The governing board may hold the public hearing and adopt the annexation ordinance as provided in subsection (d) of this section."

Sec. 2. Article 4A, Part 4 of Chapter 160A of the General Statutes is amended by adding a new section to read:

"§ 160A-58.7 *Annexation of municipal property.*--The city council may initiate annexation of property not contiguous to the primary corporate limits and owned by the city by adopting a resolution stating its intent to annex the property, in lieu of filing a petition. The property must satisfy the requirements of G.S. 160A-58.1. The resolution shall contain an adequate description of the property and fix a date for a public hearing on the question of annexation. Notice of the public hearing shall be published once at least 10 days before the date of the hearing. At the hearing, any resident of the city may appear and be heard on the question of the desirability of the annexation. If the council finds that annexation is in the public interest, it may adopt an ordinance annexing the property. The ordinance may be made effective immediately or on any specified date within six months from the date of passage."

Sec. 3. To facilitate water and sewer development and other purposes compliance with G.S. 160A-58.1(b)(2) is not required for the City of Concord for a period of 90 days following the effective date of this act.

Sec. 4. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 6th day of July, 1987.

S.B. 107

CHAPTER 563

AN ACT TO BE KNOWN AS THE NORTH CAROLINA
UNIFORM TRANSFERS TO MINORS ACT AS
RECOMMENDED BY THE GENERAL STATUTES
COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. Article 12 of Chapter 33 of the General Statutes, entitled "Gifts of Securities and Money to Minors", is repealed.

Sec. 2. The General Statutes are amended by adding a new Chapter 33A to read:

"Chapter 33A.

"North Carolina Uniform Transfers to Minors Act.

" § 33A-1. Definitions.--In this Chapter:

(1) 'Adult' means an individual who has attained the age of 21 years.

(2) 'Benefit plan' means an employer's plan for the benefit of an employee or partner.

(3) 'Broker' means a person lawfully engaged in the business of effecting transactions in securities or commodities for the person's own account or for the account of others.

(4) 'Court' means the clerk of the superior court of the several counties of the State.

(5) 'Custodial property' means (i) any interest in property transferred to a custodian under this Chapter and (ii) the income from and proceeds of that interest in property.

(6) 'Custodian' means a person so designated under Section 33A-9 or a successor or substitute custodian designated under Section 33A-18.

(7) 'Financial institution' means a bank, trust company, savings and loan associations or other savings institutions, or credit union, chartered and supervised under State or federal law.

(8) 'Guardian' means a person appointed or qualified by a court to act as general, limited, or temporary guardian of a minor's property or a person legally authorized to perform substantially the same functions.

(9) 'Legal representative' means an individual's personal representative or guardian.

(10) 'Member of the minor's family' means the minor's parent, spouse, grandparent, brother, sister, uncle, or aunt, whether of the whole or half blood or by adoption.

(11) 'Minor' means an individual who has not attained the age of 21 years.

(12) 'Person' means an individual, corporation, organization, or other legal entity.

(13) 'Personal representative' means an executor, administrator, successor personal representative, collector, or special administrator of a decedent's estate or a person legally authorized to perform substantially the same function.

(14) 'State' includes any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession subject to the legislative authority of the United States.

(15) 'Transfer' means a transaction that creates custodial property under G.S. 33A-9.

(16) 'Transferor' means a person who makes a transfer under this Chapter.

(17) 'Trust company' means a financial institution, corporation, or other legal entity, authorized to exercise general trust powers.

" § 33A-2. *Scope and jurisdiction.*--(a) This Chapter applies to a transfer if at the time of the transfer, the transferor, the minor, or the custodian is a resident of this State or the custodial property is located in this State and the transfer instrument refers to this Chapter in the designation under G.S. 33A-9(a) by which the transfer is made. The custodianship so created remains subject to this Chapter despite a subsequent change in residence of a transferor, the minor, or the custodian, or the removal of custodial property from this State.

(b) A person designated as custodian under this Chapter is subject to personal jurisdiction in this State with respect to any matter relating to the custodianship.

(c) A transfer that purports to be made and which is valid under the Uniform Transfers to Minors Act, the Uniform Gifts to Minors Act, or a substantially similar act, of another state is governed by the law of the designated state and may be executed and is enforceable in this State if at the time of the transfer, the transferor, the minor, or the custodian is a resident of the designated state or the custodial property is located in the designated state.

(d) This act shall not be construed to be the exclusive procedures for transferring property interests to minors and any other procedure for such transfers authorized by the law of this State and, not specifically repealed shall continue in effect.

" § 33A-3. *Nomination of Custodian.*--(a) A person having the right to designate the recipient of property transferable upon the occurrence of a future event may revocably nominate a custodian to receive the property for a minor beneficiary upon the occurrence of the event by naming the custodian followed in substance by the words: 'as custodian for _____ (name of minor) under the North Carolina Uniform Transfers to Minors Act.' The nomination may name one or more persons as substitute custodians to whom the property must be transferred, in the order named, if the first nominated custodian dies before the transfer or is unable, declines, or is ineligible to serve. The nomination may be made in a will, a trust, a deed, an instrument exercising a power of appointment, or in a writing designating a beneficiary of contractual rights which is registered with or delivered to the payor, issuer, or other obligor of the contractual rights.

(b) A custodian nominated under this section must be a person to whom a transfer of property of that kind may be made under G.S. 33A-9(a).

(c) The nomination of a custodian under this section does not create custodial property until the nominating instrument becomes irrevocable or a transfer to the nominated custodian is completed under G.S. 33A-9. Unless the nomination of a custodian has been revoked, upon the occurrence of the future event the custodianship becomes effective and the custodian shall enforce a transfer of the custodial property pursuant to G.S. 33A-9.

" § 33A-4. *Transfer by gift or exercise of power of appointment.*--A person may make a transfer by irrevocable gift to, or the irrevocable exercise of a power of appointment in favor of, a custodian for the benefit of a minor pursuant to G.S. 33A-9.

" § 33A-5. *Transfer authorized by will or trust.*--(a) A personal representative or trustee may make an irrevocable transfer pursuant to G.S. 33A-9 to a custodian for the benefit of a minor as authorized in the governing will or trust.

(b) If the testator or settlor has nominated a custodian under G.S. 33A-3 to receive the custodial property, the transfer must be made to that person.

(c) If the testator or settlor has not nominated a custodian under G.S. 33A-3, or all persons so nominated as custodian die before the transfer or are unable, decline, or are ineligible to serve the personal representative or the trustee, as the case may be, shall designate the custodian from among those eligible to serve as custodian for property of that kind under G.S. 33A-9(a).

" § 33A-6. *Other transfer by fiduciary.*--(a) Subject to subsection (c), a personal representative or trustee may make an irrevocable transfer to the transferor or to another adult or trust company as custodian for the benefit of a minor pursuant to G.S. 33A-9, in the absence of a will or under a will or trust that does not contain an authorization to do so.

(b) Subject to subsection (c), a guardian may make an irrevocable transfer to the transferor or to another adult or trust company as custodian for the benefit of the minor pursuant to Section 33A-9.

(c) A transfer under subsection (a) or (b) may be made only if (i) the personal representative, trustee, or guardian considers the transfer to be in the best interest of the minor, and (ii) the transfer is not prohibited by or inconsistent with provisions of the applicable will, trust agreement, or other governing instrument. If the value of the property transferred under subsections (a) or (b) will total more than ten thousand dollars (\$10,000), whether in one or more transfers, that transfer must be authorized by the court. If a transfer under

subsections (a) or (b) is to the transferor then the transfer must be authorized by the court.

" § 33A-7. *Transfer by obligor.*--(a) Subject to subsections (b) and (c), a person not subject to Section 33A-5 or 33A-6 who holds property of or owes a liquidated debt to a minor not having a guardian may make an irrevocable transfer to a custodian for the benefit of the minor pursuant to Section 33A-9.

(b) If a person having the right to do so under Section 33A-3 has nominated a custodian under that section to receive the custodial property, the transfer must be made to that person.

(c) If no custodian has been nominated under Section 33A-3, or all persons so nominated as custodian die before the transfer or are unable, decline, or are ineligible to serve, a transfer under this section may be made to an adult member of the minor's family or to a trust company if the aggregate value of the property does not exceed ten thousand dollars (\$10,000) in value.

" § 33A-8. *Receipt for custodial property.*--A written acknowledgement by a custodian of delivery authorized by this Chapter constitutes a sufficient receipt and discharge for custodial property transferred to the custodian.

" § 33A-9. *Manner of creating custodial property and effecting transfer; designation of initial custodian; control.*--(a) Custodial property is created and a transfer is made whenever:

- (1) an uncertificated security or a certificated security in registered form is either:
 - (i) registered in the name of the transferor, an adult other than the transferor, or a trust company, followed in substance by the words: 'as custodian for _____ (name of minor) under the North Carolina Uniform Transfers to Minors Act'; or
 - (ii) delivered if in certificated form, or any document necessary for the transfer of an uncertificated security is delivered, together with any necessary endorsement to an adult other than the transferor or to a trust company as custodian, accompanied by an instrument in substantially the form set forth in subsection (b);
- (2) money is paid or delivered, or a security held in the name of a broker, financial institution, or its nominee is transferred, to a broker or financial institution for credit to an account in the name of the transferor, an adult other than the transferor, or a trust company, followed in

- substance by the words: 'as custodian for _____ (name of minor) under the North Carolina Uniform Transfers to Minors Act';
- (3) the ownership of a life or endowment insurance policy or annuity contract is either:
- (i) registered with the issuer in the name of the transferor, an adult other than the transferor, or a trust company, followed in substance by the words 'as custodian for _____ (name of minor) under the North Carolina Uniform Transfers to Minors Act'; or
 - (ii) assigned in a writing delivered to an adult other than the transferor or to a trust company whose name in the assignment is followed in substance by the words: 'as custodian for _____ (name of minor) under the North Carolina Uniform Transfers to Minors Act';
- (4) an irrevocable exercise of a power of appointment or an irrevocable present right to future payment under a contract is the subject of a written notification delivered to the payor, issuer, or other obligor that the right is transferred to the transferor, an adult other than the transferor, or a trust company, whose name in the notification is followed in substance by the words: 'as custodian for _____ (name of minor) under the North Carolina Uniform Transfers to Minors Act';
- (5) an interest in real property is conveyed or devised to the transferor, an adult other than the transferor, or a trust company, whose name in the conveyance is followed in substance by the words: 'as custodian for _____ (name of minor) under the North Carolina Uniform Transfers to Minors Act';
- (6) a certificate of title issued by a department or agency of a state or of the United States which evidences title to tangible personal property is either:
- (i) issued in the name of the transferor, an adult other than the transferor, or a trust company, followed in substance by the words: 'as custodian for _____ (name of minor) under the North Carolina Uniform Transfers to Minors Act'; or
 - (ii) delivered to an adult other than the transferor or to a trust company, endorsed to that person followed in substance by the words: 'as custodian for _____ (name of minor) under the North Carolina Uniform Transfers to Minors Act'; or

- (7) an interest in any property not described in paragraphs (1) through (6) is transferred to an adult other than the transferor or to a trust company by a written instrument in substantially the form set forth in subsection (b).

(b) An instrument in the following form satisfies the requirements of paragraphs (1)(ii) and (7) of subsection (a):

**'TRANSFER UNDER THE NORTH CAROLINA
UNIFORM TRANSFERS TO MINORS ACT**

I, _____ (name of transferor or name and representative capacity if a fiduciary) hereby transfer to _____ (name of custodian), as custodian for _____ (name of minor) under the North Carolina Uniform Transfers to Minors Act, the following: (insert a description of the custodial property sufficient to identify it).

Dated: _____

(Signature)

_____ (name of custodian) acknowledges receipt of the property described above as custodian for the minor named above under the North Carolina Uniform Transfers to Minors Act.

Dated: _____

(Signature of Custodian)

(c) A transferor shall place the custodian in control of the custodial property as soon as practicable.

"§ 33A-10. *Single Custodianship.*--A transfer may be made only for one minor, and only one person may be the Custodian. All custodial property held under this Chapter by the same custodian for the benefit of the same minor constitutes a single custodianship.

"§ 33A-11. *Validity and effect of transfer.*--(a) The validity of a transfer made in a manner prescribed in this Chapter is not affected by:

- (1) failure of the transferor to comply with G.S. 33A-9(c) concerning control;
- (2) designation of an ineligible custodian, except designation of the transferor in the case of property for which the transferor is ineligible to serve as custodian under G.S. 33A-9(a);
- (3) death or incapacity of a person nominated under G.S. 33A-3 or designated under G.S. 33A-9 as custodian or the disclaimer of the office by that person; or
- (4) the use of an abbreviation in referring to this Chapter or the equivalent act of another state.

(b) A transfer made pursuant to G.S. 33A-9 is irrevocable, and the custodial property is indefeasibly vested in the minor, but the custodian has all the rights, powers, duties, and authority provided in this Chapter, and neither the minor nor the minor's legal representative has any right, power, duty, or authority with respect to the custodial property except as provided in this Chapter.

(c) By making a transfer, the transferor incorporates in the disposition all the provisions of this Chapter and grants to the custodian, and to any third person dealing with a person designated as custodian, the respective powers, rights, and immunities provided in this Chapter.

" § 33A-12. *Care of custodial property.*--(a) A custodian shall:

- (1) take control of custodial property;
- (2) register or record title to custodial property if appropriate; and
- (3) collect, hold, manage, invest, and reinvest custodial property.

(b) In dealing with custodial property, a custodian shall observe the standard of care that would be observed by a prudent person dealing with property of another and is not limited by any other statute restricting investments by fiduciaries. If a custodian has a special skill or expertise or is named custodian on the basis of representations of a special skill or expertise, the custodian shall use that skill or expertise. However, a custodian, in the custodian's discretion and without liability to the minor or the minor's estate, may retain any custodial property received from a transferor.

(c) A custodian may invest in or pay premiums on life insurance or endowment policies on (i) the life of the minor only if the minor or the minor's estate or the custodian in the capacity of custodian is the sole beneficiary, or (ii) the life of another person in whom the minor has an insurable interest only to the extent that the minor, the minor's estate, or the custodian in the capacity of custodian, is the irrevocable beneficiary.

(d) A custodian at all times shall keep custodial property separate and distinct from all other property in a manner sufficient to identify it clearly as custodial property of the minor. Custodial property may be held with other owners if owned as tenants in common, provided that the property interest of the owners is fixed. Custodial property subject to recordation is so identified if it is recorded, and custodial property subject to registration is so identified if it is either registered, or held in an account designated, in the name of the custodian, followed in substance by the words: 'as a custodian for _____ (name of minor)

under the North Carolina Uniform Transfers to Minors Act.'

(e) A custodian shall keep records of all transactions with respect to custodial property, including information necessary for the preparation of the minor's tax returns, and shall make them available for inspection at reasonable intervals by a parent or legal representative of the minor, or by the minor if the minor has attained the age of 14 years.

" § 33A-13. *Powers of custodian.*--(a) A custodian, acting in a custodial capacity, has all the rights, powers, and authority over custodial property that unmarried adult owners have over their own property, but a custodian may exercise those rights, powers, and authority in the capacity of a custodian only.

(b) This section does not relieve a custodian from liability for breach of G.S. 33A-12.

" § 33A-14. *Use of custodial property.*--(a) A custodian may deliver or pay to the minor or expend for the minor's benefit so much of the custodial property as the custodian considers advisable for the use and benefit of the minor, without court order and without regard to (i) the duty or ability of the custodian personally or of any other person to support the minor, or (ii) any other income or property of the minor which may be applicable or available for that purpose.

(b) On petition of an interested person or the minor if the minor has attained the age of 14 years, the court may order the custodian to deliver or pay to the minor or expend for the minor's benefit so much of the custodial property as the court considers advisable for the use and benefit of the minor.

(c) A delivery, payment, or expenditure under this section is in addition to, not in substitution for, and does not affect any obligation of a person to support the minor.

" § 33A-15. *Custodian's expenses, compensation, and bond.*--(a) A custodian is entitled to pay from and to be reimbursed from custodial property for reasonable expenses incurred in the performance of the custodian's duties.

(b) Except for one who is a transferor under G.S. 33A-4, a custodian has a noncumulative election during each calendar year to charge reasonable compensation for services performed during that year.

(c) Except as provided in G.S. 33A-18(f), a custodian need not give a bond.

" § 33A-16. *Exemption of third person from liability.*--A third person in good faith and without court order may act on the instructions of or

otherwise deal with any person purporting to make a transfer or purporting to act in the capacity of a custodian and, in the absence of knowledge, is not responsible for determining:

- (1) The validity of the purported custodian's designation;
- (2) the propriety of, or the authority under this Chapter for, any act of the purported custodian;
- (3) the validity or propriety under this Chapter of any instrument or instructions executed or given either by the person purporting to make a transfer or by the purported custodian; or
- (4) the propriety of the application of any property of the minor delivered to the purported custodian.

" § 33A-17. *Liability to Third Persons.*--(a) A claim based on (i) a contract entered into by a custodian acting in a custodial capacity, (ii) an obligation arising from the ownership or control of custodial property, or (iii) a tort committed during the custodianship, may be asserted against the custodial property by proceeding against the custodian in the custodial capacity, whether or not the custodian or the minor is personally liable therefor.

(b) A custodian may be held personally liable:

- (1) on a contract properly entered into in the custodial capacity if the custodian fails to reveal that capacity and to identify the custodianship in the contract; or
- (2) for an obligation arising from control of custodial property or for a tort committed during the custodianship if the custodian is personally at fault.

(c) A minor is not personally liable for an obligation arising from ownership of custodial property or for a tort committed during the custodianship unless the minor is personally at fault.

" § 33A-18. *Renunciation, resignation, death, or removal of custodian; designation of successor custodian.*--(a) A person nominated under G.S. 33A-3 or designated under G.S. 33A-9 as custodian may decline to serve by delivering a written disclaimer to the person who made the nomination or to the transferor or the transferor's legal representative. If the event giving rise to a transfer has not occurred and no substitute custodian able, willing, and eligible to serve was nominated under G.S. 33A-3, the person who made the nomination may nominate a substitute custodian under G.S. 33A-3; otherwise the transferor or the transferor's legal representative shall designate a substitute custodian at the time of the transfer, in either case from among the persons eligible to serve as custodian for that kind of property under G.S. 33A-9(a).

(b) A custodian at any time may designate a trust company or an adult other than the transferor under G.S. 33A-4 as successor custodian by executing and dating an instrument of designation before a subscribing witness other than the successor. If the instrument of designation does not contain or is not accompanied by the resignation of the custodian, the designation of the successor does not take effect until the custodian resigns, dies, becomes incapacitated, or is removed.

(c) A custodian may resign at any time by delivering written notice to the minor if the minor has attained the age of 14 years and to the successor custodian and by delivering the custodial property to the successor custodian.

(d) If a custodian is ineligible, dies, or becomes incapacitated without having effectively designated a successor and the minor has attained the age of 14 years, the minor may designate as successor custodian, in the manner prescribed in subsection (b), an adult member of the minor's family, a guardian of the minor, or a trust company. If the minor has not attained the age of 14 years or fails to act within 60 days after the ineligibility, death, or incapacity, the guardian of the minor becomes successor custodian. If the minor has no guardian or the guardian declines to act, the transferor, the legal representative of the transferor or of the custodian, an adult member of the minor's family, or any other interested person may petition the court to designate a successor custodian.

(e) A custodian who declines to serve under subsection (a) or resigns under subsection (c), or the legal representative of a deceased or incapacitated custodian, as soon as practicable, shall put the custodial property and records in the possession and control of the successor custodian. The successor custodian by action may enforce the obligation to deliver custodial property and records and becomes responsible for each item as received.

(f) A transferor, the legal representative of a transferor, an adult member of the minor's family, a guardian of the person of the minor, the guardian of the minor, or the minor if the minor has attained the age of 14 years may petition the court to remove the custodian for cause and to designate a successor custodian other than a transferor under G.S. 33A-4 or to require the custodian to give appropriate bond.

" § 33A-19. Accounting by and determination of liability of custodian.-

-(a) A minor who has attained the age of 14 years, the minor's guardian of the person or legal representative, an adult member of the minor's family, a transferor, or a transferor's legal representative may petition the court (i) for an accounting by the custodian or the custodian's legal representative; or (ii) for a determination of

responsibility, as between the custodial property and the custodian personally, for claims against the custodial property unless the responsibility has been adjudicated in an action under G.S. 33A-17 to which the minor or the minor's legal representative was a party.

(b) A successor custodian may petition the court for an accounting by the predecessor custodian.

(c) The court, in a proceeding under this Chapter or the presiding judge in any other proceeding, may require or permit the custodian or the custodian's legal representative to account.

(d) If a custodian is removed under G.S. 33A-18(f), the court shall require an accounting and order delivery of the custodial property and records to the successor custodian and the execution of all instruments required for transfer of the custodial property.

" § 33A-20. *Termination of custodianship.*--The custodian shall transfer in an appropriate manner the custodial property to the minor or to the minor's estate upon the earlier of:

- (1) the minor's attainment of 21 years of age with respect to custodial property transferred under G.S. 33A-4 or G.S. 33A-5, except that any transferor may have custodial property transferred to the minor at any time after the age of 18 and before the age of 21 by a designation in the following words or their equivalent: 'The custodian shall transfer this property to _____ (name of minor) when he reaches the age of _____ (age after 18 and before 21).';
- (2) the minor's attainment of age 18 with respect to custodial property transferred under G.S. 33A-6 or G.S. 33A-7; or
- (3) the minor's death.

" § 33A-21. *Applicability.*--This Chapter applies to a transfer within the scope of G.S. 33A-2 made after its effective date if:

- (1) the transfer purports to have been made under the Uniform Gifts to Minors Act of North Carolina; or
- (2) the instrument by which the transfer purports to have been made uses in substance the designation 'as custodian under the Uniform Gifts to Minors Act' or 'as custodian under the Uniform Transfers to Minors Act' of any other state, and the application of this Chapter is necessary to validate the transfer.

" § 33A-22. *Effect on existing custodianships.*--(a) Any transfer of custodial property as now defined in this Chapter made before the effective date of this Chapter is validated notwithstanding that there was no specific authority in the Uniform Gifts to Minors Act of North Carolina for the coverage of custodial property of that kind or for a

transfer from that source at the time the transfer was made.

(b) This Chapter applies to all transfers made before the effective date of this Chapter in a manner and form prescribed in the Uniform Gifts to Minors Act of North Carolina, except insofar as the application impairs constitutionally vested rights or extends the duration of custodianships in existence on the effective date of this Chapter.

(c) G.S. 33A-1 and G.S. 33A-20 with respect to the age of a minor for whom custodial property is held under this Chapter shall not apply to custodial property held in a custodianship that terminated because of the minor's attainment of the age of majority and before the effective date of this Chapter.

" § 33A-23. *Uniformity of application and construction.*--This Chapter shall be applied and construed to effect its general purpose to make uniform the law with respect to the subject of this Chapter among states enacting it.

" § 33A-24. *Short title.*--This Chapter may be cited as the 'North Carolina Uniform Transfers to Minors Act.'"

Sec. 3. This act shall become effective October 1, 1987.

In the General Assembly read three times and ratified this the 6th day of July, 1987.

H.B. 1006

CHAPTER 564

AN ACT TO CONVERT COMMUNITY COLLEGES AND TECHNICAL INSTITUTES INTO COMMUNITY COLLEGES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 115D-2 reads as rewritten:

" § 115D-2. *Definitions.*--As used in this Chapter:

- (1) The 'administrative area' of an institution comprises the county or counties directly responsible for the local financial support and local administration of such institution as provided in this Chapter.
- (2) The term 'community college' is defined as an educational institution operating under the provisions of this Chapter and dedicated primarily to the educational needs of the ~~particular~~ service area for which established, it serves, and may offer
 - a. ~~Which offers~~ the freshmen and sophomore courses of a college of arts and sciences, authorized by G.S. 115D-4.1;

- b. ~~Which offers~~ organized credit curricula for the training of technicians; curricular courses may carry transfer credit to a senior college or university where the course is comparable in content and quality and is appropriate to a chosen course of study;
 - c. ~~Which offers~~ vocational, trade, and technical specialty courses and programs, and
 - d. ~~Which offers~~ courses in general adult education.
- Local boards of trustees, with concurrence of the respective county commissioners, may, before January 1, 1988, adopt names of their respective institutions that include the words 'Community College'.
- (3) The term 'institution' refers to a community college or a technical institute, any institution established pursuant to this Chapter except for the North Carolina Vocational Textile School.
 - (4) The term 'regional institution' means an institution which serves residents from three or more counties that were assigned as of July 1, 1973, to the institution — whose service area as assigned by the State Board of Community Colleges for the purpose of conducting adult basic education classes, includes three or more counties; provided, however, any institution receiving funds as a regional institution on May 1, 1987, shall continue to receive funds on that basis.
 - (5) The term 'State Board' refers to the State Board of Community Colleges.
 - (6) The 'tax-levying authority' of an institution is the board of commissioners of the county or all of the boards of commissioners of the counties, jointly, which constitute the administrative area of the institution.
 - (7) ~~The term 'technical institute' is defined as an educational institution operating under the provisions of this Chapter and dedicated primarily to the educational needs of the particular area for which established, and~~
 - a. ~~Which offers organized credit curricula for the training of technicians; curricular courses may carry transfer credit to a senior college or university where the course is comparable in content and quality and is appropriate to a chosen course of study;~~
 - b. ~~Which offers vocational, trade, and technical specialty courses and programs,~~
 - c. ~~Which offers courses in general adult education.~~

~~d. The terms 'technical institute' and 'technical college' are deemed to be synonymous. Local boards of trustees, with concurrence of the respective county commissioners, may elect to use either term.~~

- (8) 'Vending facilities' has the same meaning as it does in G.S. 143-12.1."

Sec. 2. G.S. 115D-3 reads as rewritten:

"§ 115D-3. ~~Department of Community Colleges; staff; advisory council.~~--The Department of Community Colleges shall be a principal administrative department of State government under the direction of the State Board of Community Colleges, and shall be separate from the free public school system of the State and the Department of Public Education. The State Board ~~shall have~~ has authority to adopt and administer all policies, regulations, and standards which it ~~may deem~~ deems necessary for the operation of the Department.

~~The State Board shall elect a State President of the Department of Community Colleges. He shall be the chief administrative officer of the Department.~~ North Carolina System of Community Colleges who shall serve as chief administrative officer of the Department of Community Colleges. The compensation of this position shall be fixed by the State Board from funds provided by the General Assembly in the Current Operations Appropriations Act.

The ~~State~~ President shall be assisted by such professional staff members as may be deemed necessary to carry out the provisions of this Chapter, who shall be elected by the State Board on nomination of the ~~State~~ President. The compensation of the staff members elected by the Board shall be fixed by the ~~Governor and~~ State Board of Community Colleges. Colleges, upon recommendation of the President of the Community College System, from funds provided in the Current Operations Appropriations Act. These staff members shall include such officers as may be deemed desirable by the ~~State~~ President and State Board. Provision shall be made for persons of high competence and strong professional experience in such areas as academic affairs, public service programs, business and financial affairs, institutional studies and long-range planning, student affairs, research, legal affairs, health affairs and institutional development, and for State and federal programs administered by the State Board. In addition, the ~~State~~ President shall be assisted by such other employees as may be needed to carry out the provisions of this Chapter, who shall be subject to the provisions of Chapter 126 of the General Statutes. The staff complement shall be established by the State Board on recommendation of the ~~State~~ President to insure that there are persons on the staff who have the professional competence and experience to carry out the duties assigned and to insure that there are

persons on the staff who are familiar with the problems and capabilities of all of the principal types of institutions represented in the system. The State Board of Community Colleges shall have all other powers, duties, and responsibilities delegated to the State Board of Education affecting the Department of Community Colleges not otherwise stated in this Chapter. ~~Prior to taking any action under this section where joint approval is required, the Governor and State Board of Community Colleges may consult with the Advisory Budget Commission."~~

Sec. 3. G.S. 115D-4 reads as rewritten:

*"§ 115D-4. Establishment and transfer of institutions; capital improvements.--*The establishment of all community colleges ~~and technical institutes or the conversion of any such existing institution into a new type of institution~~ shall be subject to the approval of the General Assembly upon recommendation of the State Board of Community Colleges. In no case, however, shall favorable recommendation be made by the State Board for the establishment of an institution until it has been demonstrated to the satisfaction of the State Board that a genuine educational need exists within a proposed administrative area, that existing public and private post-high school institutions in the area will not meet the need, that adequate local financial support for the institution will be provided, that public schools in the area will not be affected adversely by the local financial support required for the institution, and that funds sufficient to provide State financial support of the institution are available.

The expenditures of any State funds for any capital improvements of existing institutions shall be subject to the prior approval of the State Board of Community Colleges and the Governor, provided that the Governor may consult with the Advisory Budget Commission before giving approval. The expenditure of State funds at any institution herein authorized to be approved by the State Board shall be subject to the terms of the Executive Budget Act unless specifically otherwise provided in this Chapter."

Sec. 4. Chapter 115D of the General Statutes is amended by adding a new section to read:

*"§ 115D-4.1. College transfer program approval.--*Enrollment in the college transfer program of a community college that offered this program before July 1, 1987, shall not exceed its current percent of college transfer enrollment or fifteen percent (15%) of the institution's total budget full-time equivalent students or 132 full-time equivalent students, whichever is greater. The State Board of Community Colleges may, in its own discretion, make exception to this requirement where the inherent market demand of a community

causes an institution to exceed the fifteen percent (15%), or its current enrollment percentage.

(b) The State Board of Community Colleges may approve the addition of the college transfer program to a community college. If addition of the college transfer program to an institution would require a substantial increase in funds, State Board approval shall be subject to appropriation of funds by the General Assembly for this purpose.

(c) Addition of the college transfer program shall not decrease an institution's ability to provide programs within its basic mission of vocational and technical training and basic academic education. Enrollment in the college transfer program shall not exceed fifteen percent (15%) of an institution's total budget full-time equivalent students or 132 full-time equivalent students, whichever is greater, in each institution where the college transfer program is added after June 30, 1987; provided, however, the State Board of Community Colleges may, in its own discretion, make exceptions to this requirement where the inherent market demand of a community causes an institution to exceed the fifteen percent (15%).

(d) The State Board of Community Colleges shall develop appropriate criteria and standards to regulate addition of the college transfer program to institutions. The State Board is authorized to apply the criteria and standards for addition of the college transfer program adopted as a proposed rule at its April 9, 1987, meeting until modified through the rule-making process."

Sec. 5. G.S. 115D-36 reads as rewritten:

"§ 115D-36. Elections on question of ~~conversion of institutions~~ the addition of a college transfer program at an institution and issuance of bonds therefor.--Whenever the board of trustees of an institution requests the State Board of Community Colleges to ~~convert the institution from a technical institute to a community college,~~ authorize the addition of in a college transfer program, the Board shall require, as a prerequisite to such ~~conversion;~~ addition:

- (1) The authorization by the voters of the administrative area of an annual levy of taxes within a specified maximum annual rate sufficient to provide the required local financial support for the ~~converted institution,~~ institution after the addition of the college transfer program, in an election held in accordance with the appropriate provisions of G.S. 115D-33 and 115D-35.
- (2) The approval by the voters of the administrative area of the issuance of bonds for capital outlay necessary for the ~~conversion of the institution,~~ institution after the addition of

the college transfer program, in an election held in accordance with the appropriate provisions of G.S. 115D-33 and 115D-35."

Sec. 6. The Chapter name of Chapter 115D of the General Statutes reads as rewritten:

"CHAPTER 115D.

~~"Community Colleges and Technical Institutes—~~ Colleges."

Sec. 7. G.S. 116-143.3(c) is amended by deleting the language "North Carolina Board of Community Colleges" and substituting "State Board of Community Colleges".

Sec. 8. G.S. 115D-5(d) is amended by deleting the language "Community colleges and technical institutes" wherever it appears and substituting "Community colleges".

Sec. 9. The following sections of the General Statutes are amended by deleting the language "community colleges and technical institutes" wherever it appears and substituting "community colleges": G.S. 58-27.22, 115D-26, 115D-31(a)(1), 143B-216.4(3) and (4), 143B-418, and 147-86.13.

Sec. 10. The following sections of the General Statutes are amended by deleting the language "community college and technical institute" wherever it appears and substituting "community college": G.S. 115D-12(a), and 159-48(c)(1).

Sec. 11. The following sections of the General Statutes are amended by deleting the language "community colleges or technical institutes" wherever it appears and substituting "community colleges": G.S. 115D-25, 115D-32(d), 143B-471.4(d), and G.S. 153A-450(a) and the catch line of 153A-450.

Sec. 12. The following sections of the General Statutes are amended by deleting the language "community college or technical institute" wherever it appears and substituting "community college": G.S. 7A-171.1(a)(3), 115C-340(a), 115C-342(a), 115D-5(c), (d) and (f), 115D-12(a), 115D-31(a), 127-194(b)(1), 143-554(c), and 153A-450(b) and (c).

Sec. 13. G.S. 40A-3(c)(11) is amended by deleting the language "community college or technical college or technical institute" and substituting "community college".

Sec. 14. The following sections of the General Statutes are amended by deleting the language "industrial education center, technical institute or community college" and substituting "community college": G.S. 54B-151(i) and 54B-189.

Sec. 15. The following section of the General Statutes is amended by deleting the language "community colleges, technical institutes" wherever it appears and substituting "community colleges":

G.S. 143-151.12.

Sec. 16. The following sections of the General Statutes are amended by deleting the language "community college, technical institute" wherever it appears and substituting "community college": G.S. 115C-340(b), and 115C-342(b).

Sec. 17. G.S. 135-40.1(6) is amended by deleting the language "Technical Institute; Community College" and substituting "Community College".

Sec. 18. G.S. 105A-2 is amended by deleting the language "State Board of Education through community colleges, technical institutes, and industrial education centers" and substituting "State Board of Community Colleges through community colleges".

Sec. 19. G.S. 116-143.1(a)(3) is amended by deleting the language "community colleges and technical institutes under the jurisdiction of the North Carolina State Board of Education" and substituting "community colleges under the jurisdiction of the State Board of Community Colleges".

Sec. 20. G.S. 115D-34(a)(1) is amended by deleting the language "college as provided in G.S. 115D-32" and substituting "institution as a community college as provided in G.S. 115D-32".

Sec. 21. G.S. 96-8(5)j. is amended by deleting the language "community college, or technical institute" and substituting "or community college".

Sec. 22. G.S. 116-71 is amended by deleting the language "technical institutes" and substituting "community colleges".

Sec. 23. G.S. 116-209.19 is amended by inserting after the language "(ii) institutions, such as community colleges and technical institutes created and existing under Chapter 115A of the General Statutes" the language "and community colleges created and existing under Chapter 115D of the General Statutes".

Sec. 24. G.S. 127A-192(d) is amended by deleting the language "community college or technical institute operated under the provision of Chapter 115A or Article 3 of Chapter 116" and substituting "community college operated under the provisions of Chapter 115D".

Sec. 25. G.S. 143-12.1(h) is amended by deleting the language "community college, technical institute, technical college," and substituting "community college".

Sec. 26. G.S. 143-31.5 is amended by deleting the language "community college, technical college, or technical institute" and substituting "community college".

Sec. 27. G.S. 143-47.6(2) is amended by deleting the language "community colleges and technical institutes created pursuant to G.S. 115A-7" and substituting "community colleges operated pursuant to

Chapter 115D of the General Statutes".

Sec. 28. G.S. 143-151.9(a)(14) is amended by deleting the language "Division of Community Colleges" and substituting "Community College System".

Sec. 29. The following sections of the General Statutes are amended by deleting the language "community college or technical institute under Chapter 115A" and substituting "community college under Chapter 115D": G.S. 143-552(1)c. and 143-555(2)c.

Sec. 30. G.S. 143-555(3) is amended by deleting the language "community colleges and technical institutes created pursuant to G.S. 115A-7" and substituting "community colleges under Chapter 115D of the General Statutes".

Sec. 31. G.S. 147-64.4(4) is amended by deleting the language "community or technical college, technical institute," and substituting "community college, or".

Sec. 32. G.S. 147-86.11(a) is amended by deleting the language ", community colleges, and technical institutes" and substituting "and community colleges".

Sec. 33. The following statutes are amended by deleting the language "State President" wherever it appears and substituting "President": G.S. 115D-5(c) and G.S. 116-37.1.

Sec. 34. G.S. 115D-34(a)(2) is amended by deleting the language "technical institute or community college" and substituting "community college".

Sec. 35. G.S. 12-3.1(b) is amended by deleting the language "community colleges, technical institutes, industrial education centers" and substituting "community colleges".

Sec. 36. G.S. 116-174.1(2) is amended by deleting the language "community college, technical institute, industrial education center" and substituting "community college".

Sec. 37. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 6th day of July, 1987.

H.B. 1071

CHAPTER 565

AN ACT TO PROVIDE FOR STANDARDIZATION OF CRIMINAL PENALTIES FOR ELECTION LAW VIOLATIONS.

The General Assembly of North Carolina enacts:

Section 1. Article 22 of Chapter 163 of the General Statutes is amended by adding a new section to read:

" § 163-272.1. *Penalties for violation of this Chapter.*--Whenever in this Chapter it is provided that a crime is a misdemeanor, the punishment shall be imprisonment for not more than six months, or a fine of not more than one thousand dollars (\$1,000), or both, in the discretion of the court."

Sec. 2. G.S. 163-90.3 reads as rewritten:

" § 163-90.3. *Making false affidavit perjury.*--Any person who shall knowingly make any false affidavit or shall knowingly swear or affirm falsely to any matter or thing required by the terms of this Article to be sworn or affirmed shall be guilty of perjury a Class I felony."

Sec. 3. G.S. 163-152(e) reads as rewritten:

"(e) Violation of Section. It shall be ~~unlawful~~ a misdemeanor for any person to give, receive, or permit assistance in the voting booth during any primary or general election or election to any voter otherwise than as is allowed by this section."

Sec. 4. G.S. 163-155(5) reads as rewritten:

" § 163-155. *Aged and disabled persons allowed to vote outside voting enclosure.*--In any primary or election any qualified voter who is able to travel to the voting place, but because of age, or physical disability and physical barriers encountered at the voting place is unable to enter the voting place or enclosure to vote in person without physical assistance, shall be allowed to vote between the hours of 7:00 A.M. and 6:00 P.M. only either in the vehicle conveying such person to the voting place or in the immediate proximity of the voting place under the following restrictions:

- (1) The county board of elections shall have printed and numbered a sufficient supply of affidavits to be distributed to each precinct registrar which shall be in the following form:

'Affidavit of person voting outside voting place or enclosure.

State of North Carolina

County of _____

I do solemnly swear (or affirm) that I am a registered voter in _____ precinct. That because of age or physical disability I am unable to enter the voting place to vote in person without physical assistance. That I desire to vote outside the voting place and enclosure.

I understand that a false statement as to my condition will subject me to a fine not to exceed five hundred dollars (\$500.00) ~~one thousand dollars (\$1,000)~~ or imprisonment not to exceed six months, or both.

Date Signature of Voter

Address _____

Signature of assistant who
administered oath.'

- (2) The registrar shall designate one of the assistants, appointed under G.S. 163-42 to attend the voter. Upon arrival outside the voting place, the voter shall execute the affidavit after being sworn by the assistant. The ballots shall then be delivered to the voter who shall mark the ballots and hand them to the assistant. The ballots shall then be delivered to one of the judges of elections who shall deposit the ballots in the proper boxes. The affidavit shall be delivered to the other judge of election.
- (3) The voter shall be entitled to the same assistance in marking the ballots as is authorized by G.S. 163-152.
- (4) The affidavit executed by the voter shall be retained by the county board of elections for a period of six months. In those precincts using voting machines, the county board of elections shall furnish paper ballots of each kind for use by persons authorized to vote outside the voting place by this section.
- (5) If there is no assistant appointed under G.S. 163-42 to perform the duties required by this section, the precinct registrar or one of the precinct judges, to be designated by the voter, if he chooses, or, if he does not, by the precinct registrar, shall perform those duties.

~~A violation of this section shall be a misdemeanor and upon conviction punished by a fine not to exceed five hundred dollars (\$500.00) or imprisonment not to exceed six months, or both, in the discretion of the court."~~

Sec. 5. G.S. 163-177 reads as rewritten:

"§ 163-177. *Disposition of duplicate abstracts.*--Within six hours after the returns of a primary or election have been canvassed and the results judicially determined, the chairman of the county board of elections shall mail, or otherwise deliver, to the State Board of Elections the duplicate-original abstracts prepared in accordance with G.S. 163-176 for all offices and referenda for which the State Board of Elections is required to canvass the votes and declare the results including:

President and Vice-President of the United States

Governor, Lieutenant Governor, and all other State executive officers

United States Senators

Members of the House of Representatives of the United States Congress

Justices, Judges, and District Attorneys of the General Court of Justice

State Senators in multi-county senatorial districts

Members of the State House of Representatives in multi-county representative districts

Constitutional amendments and propositions submitted to the voters of the State.

One duplicate abstract prepared in accordance with G.S. 163-176 for all offices and referenda for which the county board of elections is required to canvass the votes and declare the results (and which are listed below) shall be retained by the county board, which shall forthwith publish and declare the results; the second duplicate abstract shall be mailed to the Chairman of the State Board of Elections, to the end that there be one set of all primary and election returns available at the seat of government.

All county offices

State Senators in single-county senatorial districts

Members of the State House of Representatives in single-county representative districts

Propositions submitted to the voters of one county.

If the chairman of the county board of elections fails or neglects to transmit duplicate abstracts to the Chairman of the State Board of Elections within the time prescribed in this section, he shall be guilty of a misdemeanor ~~and subject to a fine of one thousand dollars (\$1,000)~~: Provided, that the penalty shall not apply if the chairman was prevented from performing the prescribed duty because of sickness or other unavoidable delay, but the burden of proof shall be on the chairman to show that his failure to perform was due to sickness or unavoidable delay."

Sec. 6. G.S. 163-221(c) reads as rewritten:

"(c) Any person who willfully violates this section is guilty of a misdemeanor ~~and, upon conviction, shall be imprisoned for not more than six months or fined in an amount not to exceed five hundred dollars (\$500.00), or both.~~"

Sec. 7. G.S. 163-226.3(a) reads as rewritten:

"(a) Any person who shall, in connection with absentee voting in any primary, general, municipal or special election held in this State, do any of the acts or things declared in this section to be unlawful,

shall be guilty of a ~~Class I felony~~ Class I felony. It shall be unlawful:

- (1) For any person except the voter's near relative as defined in G.S. 163-227(c)(4) or the voter's legal guardian to assist the voter to vote an absentee ballot when the voter is voting an absentee ballot other than under the procedure described in G.S. 163-227.2; provided that if there is not a near relative or legal guardian available to assist the voter, the voter may request some other person to give assistance;
- (2) For any person to assist a voter to vote an absentee ballot under the absentee voting procedure authorized by G.S. 163-227.2 except a member of the county board of elections, the supervisor of elections, an employee of the board authorized by the board, the voter's near relative as defined in G.S. 163-227(c)(4), or the voter's legal guardian;
- (3) For a voter who votes an absentee ballot under the procedures authorized by G.S. 163-227.2 to vote his absentee ballot outside of the voting booth or private room provided to him for that purpose in the office of the county board of elections or to receive assistance in getting to and from the voting booth or private room and in preparing and marking his ballots from any person other than a member of the county board of elections, the supervisor of elections, an employee of the board of elections authorized by the board, a near relative of the voter as defined in G.S. 163-227(c)(4), or the voter's legal guardian;
- (4) For any owner, manager, director, employee, or other person, other than the voter's near relative as defined in G.S. 163-227(c)(4) or legal guardian, to make application on behalf of a registered voter who is a patient in any hospital, clinic, nursing home or rest home in this State or for any owner, manager, director, employee, or other person other than the voter's near relative or legal guardian, or officer authorized to administer oaths acting pursuant to G.S. 163-231(a)(1), to mark the voter's absentee ballot or assist such a voter in marking an absentee ballot;
- (5) For any officer with a seal to take the acknowledgment on the container-return envelope of any absentee voter in any primary or election in which the officer is a candidate for

nomination or election;

- (6) For any person to take into his possession for delivery to a voter or for return to a county board of elections the absentee ballot of any voter, provided, however, that this prohibition shall not apply to a voter's near relative as defined in G.S. 163-227(c)(4) or the voter's legal guardian;
- (7) Except as provided in subsections (1), (2), (3), and (4) of this section and G.S. 163-227.2(e), for any voter to permit another person to assist him in marking his absentee ballot, to be in the voter's presence when a voter votes an absentee ballot, or to observe the voter mark his absentee ballot."

Sec. 8. G.S. 163-237 reads as rewritten:

"§ 163-237. *Certain violations of absentee ballot law made criminal offenses.*--(a) False Statements under Oath Made Misdemeanor. If any person shall willfully and falsely make any affidavit or statement, under oath, which affidavit or statement under oath, is required to be made by the provisions of this Article, he shall be guilty of a misdemeanor, ~~and upon conviction, shall be punished by a fine of not less than one hundred dollars (\$100.00), or imprisoned for not less than 60 days, or both, in the discretion of the court.~~

(b) False Statements Not under Oath Made Misdemeanor. Except as provided by G.S. 163-275(16), if any person, for the purpose of obtaining or voting any official ballot under the provisions of this Article, shall willfully sign any printed or written false statement which does not purport to be under oath, or which, if it purports to be under oath, was not duly sworn to, he shall be guilty of a misdemeanor, ~~and upon conviction shall be fined not less than one hundred dollars (\$100.00), or imprisoned not less than 60 days, or both, in the discretion of the court.~~

(c) Fraud in Connection with Absentee Vote; Forgery. Any person attempting to aid and abet fraud in connection with any absentee vote cast or to be cast, under the provisions of this Article, shall be guilty of a misdemeanor, ~~and, upon conviction, be fined or imprisoned, in the discretion of the court.~~ Any person attempting to vote by fraudulently signing the name of a regularly qualified voter shall be guilty of forgery, and be punished accordingly.

(d) Violations Not Otherwise Provided for Made Misdemeanors. If any person shall willfully violate any of the provisions of this Article, or willfully fail to comply with any of the provisions thereof, for which no other punishment is herein provided, he shall be guilty of a

~~misdemeanor, and upon conviction, shall be fined not less than one hundred dollars (\$100.00), or imprisoned not less than six months, or both, in the discretion of the court."~~

Sec. 9. G.S. 163-236 is rewritten to read:

" § 163-236. Violations by chairman of county board of elections.-- The chairman of the county board of elections shall be sole custodian of blank applications for absentee ballots, official ballots, and container-return envelopes for absentee ballots. He shall issue and deliver blank applications for absentee ballots in strict accordance with the provisions of ~~G.S. 163-277(4)~~ G.S. 163-227(c). The issuance of ballots to persons whose applications for absentee ballots have been approved by the county board of elections under the provisions of G.S. 163-230(3) is the responsibility and duty of the chairman of the county board of elections.

It shall be the duty of the chairman of the county board of elections to keep current all records required of him by this Article and to make promptly all reports required of him by this Article.

~~The willful violation of the terms of this section shall constitute a misdemeanor, and upon conviction, the offender shall be fined not less than one hundred dollars (\$100.00), or imprisoned not less than 60 days, or both, in the discretion of the court."~~

Sec. 10. G.S. 163-270 reads as rewritten:

*" § 163-270. Using funds of insurance companies for political purposes.--*No insurance company or association, including fraternal beneficiary associations, doing business in this State shall, directly or indirectly, pay or use, or offer, consent or agree to pay or use, any money or property for or in aid of any political party, committee or organization, or for or in aid of any corporation, joint-stock company, or other association organized or maintained for political purposes, or for or in aid of any candidate for political office or for nomination for such office, or for any political purpose whatsoever, or for the reimbursement or indemnification of any person for money or property so used. An officer, director, stockholder, attorney or agent for any corporation or association which violates any of the provisions of this section, who participates in, aids, abets, advises or consents to any such violation, and any person who solicits or knowingly receives any money or property in violation of this section, shall be guilty of a misdemeanor, ~~and shall be punished by imprisonment for not more than one year and a fine of not more than one thousand dollars (\$1,000).~~

Any officer aiding or abetting in any contribution made in violation of this section shall be liable to the company or association for the amount so contributed. The Commissioner of Insurance may revoke the license of any company violating this section. No person shall be excused from attending and testifying, or producing any books, papers or other documents before any court or magistrate, upon any investigation, proceeding or trial for a violation of any of the provisions of this section, upon the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate or degrade him; but no person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he may so testify or produce evidence, documentary or otherwise, and no testimony so given or produced shall be used against him upon criminal investigation or proceeding."

Sec. 11. G.S. 163-271 reads as rewritten:

"§ 163-271. *Intimidation of voters by officers made misdemeanor.*--It shall be unlawful for any person holding any office, position, or employment in the State government, or under and with any department, institution, bureau, board, commission, or other State agency, or under and with any county, city, town, district, or other political subdivision, directly or indirectly, to discharge, threaten to discharge, or cause to be discharged, or otherwise intimidate or oppress any other person in such employment on account of any vote such voter or any member of his family may cast, or consider or intend to cast, or not to cast, or which he may have failed to cast, or to seek or undertake to control any vote which any subordinate of such person may cast, or consider or intend to cast, or not to cast, by threat, intimidation, or declaration that the position, salary, or any part of the salary of such subordinate depends in any manner whatsoever, directly or indirectly, upon the way in which subordinate or any member of his family casts, or considers or intends to cast, or not to cast his vote, at any primary or election. ~~Any person violating this section shall be guilty of a misdemeanor and punished by fine or imprisonment, or both, in the discretion of the court.~~ A violation of this section is a misdemeanor."

Sec. 12. G.S. 163-273(a) reads as rewritten:

"(a) Any person who shall, in connection with any primary or election in this State, do any of the acts and things declared in this section to be unlawful, shall be guilty of a misdemeanor, ~~and upon conviction shall be fined or imprisoned, or both, in the discretion of the court.~~ It shall be unlawful:

- (1) For a voter, except as otherwise provided in this Chapter, to allow his ballot to be seen by any person.
- (2) For a voter to take or remove, or attempt to take or remove, any ballot from the voting enclosure.
- (3) For any person to interfere with, or attempt to interfere with, any voter when inside the voting enclosure.
- (4) For any person to interfere with, or attempt to interfere with, any voter when marking his ballots.
- (5) For any voter to remain longer than the specified time allowed by this Chapter in a voting booth, after being notified that his time has expired.
- (6) For any person to endeavor to induce any voter, while within the voting enclosure, before depositing his ballots, to show how he marks or has marked his ballots.
- (7) For any person to aid, or attempt to aid, any voter by means of any mechanical device, or any other means whatever, while within the voting enclosure, in marking his ballots."

Sec. 13. G.S. 163-274 reads as rewritten:

" § 163-274. *Certain acts declared misdemeanors.*--Any person who shall, in connection with any primary or election in this State, do any of the acts and things declared in this section to be unlawful, shall be guilty of a misdemeanor, ~~and upon conviction shall be fined or imprisoned, or both, in the discretion of the court.~~ It shall be unlawful:

- (1) For any person to fail, as an officer or as a judge or registrar of a primary or election, or as a member of any board of elections, to prepare the books, ballots, and return blanks which it is his duty under the law to prepare, or to distribute the same as required by law, or to perform any other duty imposed upon him within the time and in the manner required by law;
- (2) For any person to continue or attempt to act as a judge or registrar of a primary or election, or as a member of any board of elections, after having been legally removed from such position and after having been given notice of such removal;
- (3) For any person to break up or by force or violence to stay or interfere with the holding of any primary or election, to interfere with the possession of any ballot box, election book, ballot, or return sheet by those entitled to possession of the same under the law, or to interfere in any manner with the performance of any duty imposed by law upon any election officer or member of any board of elections;

- (4) For any person to be guilty of any boisterous conduct so as to disturb any member of any election board or any registrar or judge of election in the performance of his duties as imposed by law;
- (5) For any person to bet or wager any money or other thing of value on any election;
- (6) For any person, directly or indirectly, to discharge or threaten to discharge from employment, or otherwise intimidate or oppose any legally qualified voter on account of any vote such voter may cast or consider or intend to cast, or not to cast, or which he may have failed to cast;
- (7) For any person to publish in a newspaper or pamphlet or otherwise, any charge derogatory to any candidate or calculated to affect the candidate's chances of nomination or election, unless such publication be signed by the party giving publicity to and being responsible for such charge;
- (8) For any person to publish or cause to be circulated derogatory reports with reference to any candidate in any primary or election, knowing such report to be false or in reckless disregard of its truth or falsity, when such report is calculated or intended to affect the chances of such candidate for nomination or election;
- (9) For any person to give or promise, in return for political support or influence, any political appointment or support for political office;
- (10) For any chairman of a county board of elections or other returning officer to fail or neglect, willfully or of malice, to perform any duty, act, matter or thing required or directed in the time, manner and form in which said duty, matter or thing is required to be performed in relation to any primary, general or special election and the returns thereof;
- (11) For any clerk of the superior court to refuse to make and give to any person applying in writing for the same a duly certified copy of the returns of any primary or election or of a tabulated statement to a primary or election, the returns of which are by law deposited in his office, upon the tender of the fees therefor;
- (12) For any person willfully and knowingly to impose upon any blind or illiterate voter a ballot in any primary or election contrary to the wish or desire of such voter, by falsely representing to such voter that the ballot proposed to him is such as he ~~desires~~, desires; or

- (13) Except as authorized by G.S. 163-72.2(b), for any person to provide false information, or sign the name of any other person, to a written report under G.S. 163-72.2."

Sec. 14. G.S. 163-275 reads as rewritten:

" § 163-275. *Certain acts declared felonies.*--Any person who shall, in connection with any primary, general or special election held in this State, do any of the acts or things declared in this section to be unlawful, shall be guilty of a ~~Class H felony~~ Class I felony. It shall be unlawful:

- (1) For any person fraudulently to cause his name to be placed upon the registration books of more than one election precinct or fraudulently to cause or procure his name or that of any other person to be placed upon the registration books in any precinct when such registration in that precinct does not qualify such person to vote legally therein, or to impersonate falsely another registered voter for the purpose of voting in the stead of such other voter;
- (2) For any person to give or promise or request or accept at any time, before or after any such primary or election, any money, property or other thing of value whatsoever in return for the vote of any elector;
- (3) For any person who is an election officer, a member of an election board or other officer charged with any duty with respect to any primary or election, knowingly to make any false or fraudulent entry on any election book or any false or fraudulent returns, or knowingly to make or cause to be made any false statement on any ballot, or to do any fraudulent act or knowingly and fraudulently omit to do any act or make any report legally required of such person;
- (4) For any person knowingly to swear falsely with respect to any matter pertaining to any primary or election;
- (5) For any person convicted of a crime which excludes him from the right of suffrage, to vote at any primary or election without having been restored to the right of citizenship in due course and by the method provided by law;
- (6) For any person to take corruptly the oath prescribed for voters, ~~and the person so offending shall be guilty of perjury;~~
- (7) For any person with intent to commit a fraud to register or vote at more than one precinct or more than one time, or to induce another to do so, in the same primary or election, or to vote illegally at any primary or election;

- (8) For any registrar or any clerk or copyist to make any entry or copy with intent to commit a fraud;
- (9) For any election official or other officer or person to make, certify, deliver or transmit any false returns of any primary or election, or to make any erasure, alteration, or conceal or destroy any election ballot, book, record, return or process with intent to commit a fraud;
- (10) For any person to assault any registrar, judge of election or other election officer while in the discharge of his duty in the registration of voters or in conducting any primary or election;
- (11) For any person, by threats, menaces or in any other manner, to intimidate or attempt to intimidate any registrar, judge of election or other election officer in the discharge of his duties in the registration of voters or in conducting any primary or election;
- (12) For any registrar, judge of election, member of a board of elections, assistant, marker, or other election official, directly or indirectly, to seek, receive or accept money or the promise of money, the promise of office, or other reward or compensation from a candidate in any primary or election or from any source other than such compensation as may be provided by law for his services;
- (13) For any person falsely to make or present any certificate or other paper to qualify any person fraudulently as a voter, or to attempt thereby to secure to any person the privilege of voting; voting;
- (14) ~~Any~~ For any officer authorized by G.S. 163-80 to register voters and any other individual who to knowingly and willfully ~~receives, completes, or signs~~ receive, complete, or sign an application to register from any voter contrary to the provisions of G.S. 163-72 ~~shall be guilty of a Class H felony; or~~
- (15) Reserved for future codification purposes.
- (16) For any person falsely to make the certificate provided by G.S. 163-229(b)(2)."

Sec. 15. G.S. 163-278.13(f) reads as rewritten:

"(f) Any individual, candidate, political committee, or referendum committee who violates the provisions of this section is guilty of a misdemeanor ~~and shall be fined not more than one thousand dollars (\$1,000), or imprisoned for not more than one year, or be both fined and imprisoned.~~"

Sec. 16. G.S. 163-278.19(c) reads as rewritten:

"(c) A violation of this section ~~shall be punishable by a fine of not less than one hundred dollars (\$100.00) nor more than five thousand dollars (\$5,000), or imprisonment of not more than one year, or by both fine and imprisonment.~~ is a misdemeanor. In addition, the acceptance of any contribution, expenditure, payment, reimbursement, indemnification, or anything of value under subsection (a) shall be unlawful and the defendant shall be subject to the same punishment as set forth in this subsection."

Sec. 17. G.S. 163-278.27(a) reads as rewritten:

"§ 163-278.27. *Penalty for violations; duty to report and prosecute.*--(a) Any individual, candidate, political committee, referendum committee, treasurer, person or media who violates the provisions of G.S. 163-278.7, 163-278.8, 163-278.9, 163-278.10, 163-278.11, 163-278.12, 163-278.14, 163-278.16, 163-278.17, 163-278.18, 163-278.40A, 163-278.40B, 163-278.40C, 163-278.40D or 163-278.40E is guilty of a misdemeanor ~~and shall be fined not more than one thousand dollars (\$1,000) if an individual, and not more than five thousand dollars (\$5,000) if a person other than an individual, or imprisoned for not more than one year, or be both fined and imprisoned.~~"

Sec. 18. G.S. 163-278.44 reads as rewritten:

"§ 163-278.44. *Crime; punishment.*--Any individual person, candidate, political committee, or treasurer who willfully and intentionally violates any of the provisions of this Article, shall be guilty of a misdemeanor ~~and shall be fined not more than one thousand dollars (\$1,000) if an individual, and not more than five thousand dollars (\$5,000) if a person other than an individual, or imprisoned for not more than one year, or be both fined and imprisoned.~~"

Sec. 19. This act applies only to offenses committed on or after October 1, 1987.

In the General Assembly read three times and ratified this the 6th day of July, 1987.

H.B. 1236

CHAPTER 566

AN ACT TO INCREASE SECURITIES RELATED FEES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 78A-37(b) is amended by deleting "one hundred fifty dollars (\$150.00)" and substituting "two hundred dollars (\$200.00)" and by deleting "twenty-five dollars (\$25.00)" and substituting "forty-five dollars (\$45.00)".

Sec. 2. G.S. 78A-50(e) is amended by deleting "ten dollars (\$10.00)" and substituting "one hundred fifty dollars (\$150.00)".

Sec. 3. This act shall become effective September 1, 1987.

In the General Assembly read three times and ratified this the 6th day of July, 1987.

H.B. 955

CHAPTER 567

AN ACT TO REGULATE DARK-SHADED WINDOWS IN MOTOR VEHICLES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-127(d) reads as rewritten:

"(d) On or after January 1, 1988, it shall be unlawful to operate a noncommercial passenger motor vehicle registered or which is required to be registered in this State under this Chapter, including passenger cars, pickup trucks and passenger vans, upon any highway or public vehicular area with a windshield or any other window which does not meet the light transmittance requirements of federal motor vehicle safety standard No. 205. Provided, vehicles with a windshield or any other window installed prior to August 1, 1985 which does not meet the light transmittance requirements of federal motor vehicle standard No. 205 or vehicles transporting deceased human remains will be exempt from the provisions of this subsection with a windshield or a front side window to the immediate right or left of the operator, or a rear window used for visibility, which has been darkened, smoked, or tinted after factory delivery. Provided, however, a single application of tinted film which has been registered with and approved by the Commissioner of Motor Vehicles shall be lawful if the manufacturer's label is implanted between the film and glass in the lower left section of each darkened window and is legible from outside the vehicle. The label shall indicate the film registration number, the name and address of the manufacturer and a certification of compliance with North Carolina law. No film or darkening material may be applied on the windshield except to replace the sunshield in the uppermost area as installed by the manufacturer of the vehicle, in which case the label shall be implanted between the film and glass in the upper left section of the windshield and be legible from outside the vehicle. A rear window shall be required for visibility on every vehicle unless the vehicle is equipped with an outside mirror of a type approved by the Commissioner which eliminates the requirement for an inside rearview mirror under the provisions of G.S. 20-126(a) and (b)."

Sec. 2. G.S. 20-127(e) reads as rewritten:

~~"(e) No motor vehicle inspection certificate shall be issued on or after October 1, 1987 January 1, 1988, for a motor vehicle subject to subsection (d) with a windshield or any other window which does not meet the light transmittance requirements of federal motor vehicle safety standard No. 205. Any motor vehicle otherwise subject to subsection (d) will be exempt from the provisions of this subsection provided the vehicle owner provides the motor vehicle inspector a document, attesting that any windshield or any other window not in compliance with subsection (d) was installed prior to August 1, 1985, on which the windshield or front window to the immediate right and left of the operator or the rear window if required for visibility, has been darkened by the installation of tinted film or by other means, except as permitted under subsection (d) of this section."~~

Sec. 3. G.S. 20-127 is amended by adding a new subsection to read:

"(f) Before shipping or making any tinted film available for installation on a motor vehicle in this State, the manufacturer shall apply to the Commissioner for approval and registration of its tinted film and for a label to be used in the identification and certification of compliance with light transmittance and reflectance standards. The Commissioner shall approve no tinted film to be used in the front windows or a rear window if required for visibility unless the manufacturer demonstrates that it has at least thirty-five percent (35%) light transmittance if it is to be used on front, side, or rear windows and a luminous reflectance of not more than twenty percent (20%). A fee shall be paid by the manufacturer with each application for film approval and registration in the approximate amount of the cost to the Division in the review of the applications."

Sec. 4. G.S. 20-127 is amended by adding a new subsection to read:

"(g) With any delivery of tinted film for installation in vehicles, where approved film is required, the manufacturer shall provide the required labels with written instructions and materials for permanent installation. The use of any label that is not registered, or the misuse of any registered label to mislead motor vehicle safety inspectors, law enforcement officers, or other officials shall constitute a misdemeanor."

Sec. 5. G.S. 20-127 is amended by adding a new subsection to read:

"(h) Subsections (d) through (g) of this section shall apply only to darkened, smoked or tinted film installed on motor vehicle windows after factory delivery and after the effective date of this act."

Sec. 6. This act shall become effective upon ratification.

In the General Assembly read three times and ratified this the 6th day of July, 1987.

S.B. 113

CHAPTER 568

AN ACT TO PROVIDE A STATE INCOME TAX CREDIT TO EMPLOYERS WHO CREATE JOBS IN SEVERELY DISTRESSED COUNTIES OF THE STATE.

The General Assembly of North Carolina enacts:

Section 1. Division I of Article 4 of Chapter 105 of the General Statutes is amended by adding a new section to read:

"§ 105-130.40. *Credit for creating jobs in severely distressed county.*--(a) Credit. A corporation that (i) for at least 40 weeks during the year has at least nine employees, (ii) is located, for part or all of its taxable year, in a severely distressed county, and (iii) is eligible as provided in subsection (b), may qualify for a credit against the tax imposed by this Division by creating new full-time jobs with the corporation in the severely distressed county during that year. A corporation that hires an additional full-time employee during that year to fill a position located in a severely distressed county is allowed a credit of two thousand eight hundred dollars (\$2,800) for the additional employee. A position is located in a county if (i) at least fifty percent (50%) of the employee's duties are performed in the county, or (ii) the employee is a resident of the county. The credit may not be taken in the income year in which the additional employee is hired. Instead, the credit shall be taken in equal installments over the four years following the income year in which the additional employee was hired and shall be conditioned on the continued employment by the corporation of the number of full-time employees the corporation had upon hiring the employee that caused the corporation to qualify for the credit. If, in one of the four years in which the installment of a credit accrues, the number of the corporation's full-time employees falls below the number of full-time employees the company had in the year in which the corporation qualified for the credit or the position filled by the employee is moved to another county, the credit expires and the corporation may not take any remaining installment of the credit. The corporation may,

however, take the portion of an installment that accrued in a previous year and was carried forward to the extent permitted under subsection (e) of this section.

The North Carolina Employment Security Commission shall determine the number of new full-time jobs eligible for the credit allowed by this section by comparing the average number of full-time employees reported by the corporation on the quarterly wage reports submitted to the Commission during the year with the number reported the previous year, and shall provide that information to the Secretary of Revenue annually for each employer eligible under subsection (b) of this section.

For the purposes of this section, a full-time job is a position that requires at least 1,600 hours of work per year and is intended to be held by one employee during the entire year. A full-time employee is an employee who holds a full-time job.

(b) Eligibility. A corporation is eligible for the credit allowed by this section only if it engages in manufacturing, agribusiness, processing, warehousing, wholesaling, retailing, research and development, or a service-related industry, as determined by the Employment Security Commission.

(c) County Designation. A severely distressed county is a county designated as such by the Secretary of the Department of Commerce. Each year, on or before December 31, the Secretary of the Department of Commerce shall designate which counties are considered severely distressed, and shall provide that information to the Secretary of Revenue. A county is considered severely distressed if its distress factor is one of the twenty highest in the State and it has an unemployment rate of seven percent (7%) or more. The Secretary shall assign to each county in the State a distress factor which is the sum of (1) the county's rank in a ranking of counties by rate of unemployment from lowest to highest and (2) the county's rank in a ranking of counties by per capita income from highest to lowest. In measuring rates of unemployment and per capita income, the Secretary shall use data from the North Carolina Employment Security Commission and the United States Department of Commerce for the most recent thirty-six month period for which data is available. A designation as a severely distressed county is effective only for the calendar year following the designation.

(d) Planned Expansion. A corporation that, during the year in which a county is designated as a severely distressed county, signs a letter of commitment with the Department of Commerce to create at least twenty new full-time jobs in that distressed county within two years of the date the letter is signed qualifies for the credit allowed by this section even though the employees are not hired that year. The credit shall be available in the income year after at least twenty

employees have been hired if such hirings are within the two-year commitment period. The conditions outlined in subsection (a) apply to a credit taken under this subsection except that if the county is no longer designated a severely distressed county after the year the letter of commitment was signed, the credit is still available. If the corporation does not hire the employees within the two-year period, the corporation does not qualify for the credit. However, if the corporation qualifies for a credit under subsection (a) in the year any new employees are hired, it may take the credit under that subsection.

(e) Limitations. The sale, merger, acquisition, or bankruptcy of a business, or any other transaction by which an existing business reformulates itself as another business, does not create new eligibility in a succeeding business with respect to jobs for which the predecessor was not eligible under this section. A successor corporation may, however, take any installment of or carried-over portion of a credit that its predecessor could have taken if it had taxable income. Jobs transferred from one county in the State to another county in the State shall not be considered new jobs for purposes of this section. A credit taken under this section may not exceed fifty percent (50%) of the tax imposed by this Division for the taxable year, reduced by the sum of all other credits allowed under this Division, except tax payments made by or on behalf of the corporation. Any unused portion of the credit may be carried forward for the succeeding five years."

Sec. 2. Division II of Article 4 of Chapter 105 is amended by adding a new section to read:

"§ 105-151.17. *Credit for creating jobs in severely distressed county.*--(a) Credit. A person who (i) for at least 40 weeks during the year has at least nine employees, (ii) whose business is located, for part or all of his taxable year, in a severely distressed county, and (iii) who is eligible as provided in subsection (b) may qualify for a credit against the tax imposed by this Division by creating new full-time jobs with the business in the severely distressed county during that year. A person who hires an additional full-time employee during that year to fill a position located in a severely distressed county is allowed a credit of two thousand eight hundred dollars (\$2,800) for the additional employee. A position is located in a county if (i) at least fifty percent (50%) of the employee's duties are performed in the county, or (ii) the employee is a resident of the county. The credit may not be taken in the income year in which the additional employee is hired. Instead, the credit shall be taken in equal installments over the four

years following the income year in which the additional employee was hired and shall be conditioned on the continued employment by the taxpayer of the number of full-time employees the taxpayer had upon hiring the employee that caused the taxpayer to qualify for the credit. If, in one of the four years in which the installment of a credit accrues, the number of the taxpayer's full-time employees falls below the number of full-time employees the taxpayer had in the year in which the taxpayer qualified for the credit or the position filled by the employee is moved to another county, the credit expires and the taxpayer may not take any remaining installment of the credit. The taxpayer may, however, take the portion of an installment that accrued in a previous year and was carried forward to the extent permitted under subsection (e) of this section.

The North Carolina Employment Security Commission shall determine the number of new full-time jobs eligible for the credit allowed by this section by comparing the average number of full-time employees reported by the taxpayer on the quarterly wage reports submitted to the Commission during the year with the number reported the previous year, and shall provide that information to the Secretary of Revenue annually for each employer eligible under subsection (b) of this section.

For the purposes of this section, a full-time job is a position that requires at least 1,600 hours of work per year and is intended to be held by one employee during the entire year. A full-time employee is an employee who holds a full-time job.

(b) Eligibility. A taxpayer is eligible for the credit allowed by this subsection only if he owns a business that engages in manufacturing, agribusiness, processing, warehousing, wholesaling, retailing, research and development, or a service-related industry, as determined by the Employment Security Commission.

(c) County Designation. A severely distressed county is a county designated as such by the Secretary of the Department of Commerce. Each year, on or before December 31, the Secretary of the Department of Commerce shall designate which counties are considered severely distressed, and shall provide that information to the Secretary of Revenue. A county is considered severely distressed if its distress factor is one of the twenty highest in the State and it has an unemployment rate of seven percent (7%) or more. The Secretary shall assign to each county in the State a distress factor which is the sum of (1) the county's rank in a ranking of counties by rate of unemployment from lowest to highest and (2) the county's rank in a ranking of counties by per capita income from highest to lowest. In measuring rates of unemployment and per capita income, the Secretary shall use data from the North Carolina Employment Security

Commission and the United States Department of Commerce for the most recent thirty-six month period for which data is available. A designation as a severely distressed county is effective only for the calendar year following the designation.

(d) **Planned Expansion.** A person who, during the year in which a county is designated as a severely distressed county, signs a letter of commitment with the Department of Commerce to create at least twenty new full-time jobs in that distressed county within two years of the date the letter is signed qualifies for the credit allowed by this section even though the employees are not hired that year. The credit shall be available in the income year after at least twenty employees have been hired if such hirings are within the two-year commitment period. The conditions outlined in subsection (a) apply to a credit taken under this subsection, except that if the county is no longer designated a severely distressed county after the year the letter of commitment was signed, the credit is still available. If the taxpayer does not hire the employees within the two-year period, he does not qualify for the credit. However, if the taxpayer qualifies for a credit under subsection (a) in the year any new employees are hired, he may take the credit under that subsection.

(e) **Limitations.** The sale, merger, acquisition, or bankruptcy of a business, or any other transaction by which an existing business reformulates itself as another business, does not create new eligibility in a succeeding business with respect to jobs for which the predecessor was not eligible under this section. A taxpayer may, however, take any installment of or carried-over portion of a credit that his predecessor could have taken if he had taxable income. Jobs transferred from one county in the State to another county in the State shall not be considered new jobs for purposes of this section. A credit taken under this section may not exceed fifty percent (50%) of the tax imposed by this Division for the taxable year, reduced by the sum of all other credits allowed under this Division, except tax payments made by or on behalf of the taxpayer. Any unused portion of the credit may be carried forward for the succeeding five years."

Sec. 3. This act shall become effective for taxable years beginning on or after January 1, 1988, and shall expire for taxable years beginning on or after January 1, 1993. Notwithstanding the expiration of the credit, an installment of a credit and any unused portion of a credit for which the taxpayer qualified before the act expired shall remain available to the taxpayer, to be taken in accordance with the provisions that applied to the repealed credit.

In the General Assembly read three times and ratified this the 6th day of July, 1987.

S.B. 476

CHAPTER 569

AN ACT TO AMEND CHAPTER 44A, ARTICLE 3, TO EXTEND THE FILING TIME UNDER PAYMENT BONDS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 44A-27(b) is amended by deleting "90 days" and substituting "180 days".

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 7th day of July, 1987.

S.B. 854

CHAPTER 570

AN ACT TO ADJUST THE THRESHOLD UNDER THE CONFLICT OF INTEREST STATUTE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 14-234(d1) reads as rewritten:

"(d1) The first sentence of subsection (a) shall not apply to (i) any elected official or person appointed to fill an elective office of a village, town, or city having a population of no more than 7,500 according to the most recent official federal census, (ii) any elected official or person appointed to fill an elective office of a county within which there is located no village, town, or city with a population of more than 7,500 according to the most recent official federal census, (iii) any elected official or person appointed to fill an elective office on a city board of education in a city having a population of no more than 7,500 according to the most recent official federal census, (iv) any elected official or person appointed to fill an elective office as a member of a county board of education in a county within which there is located no village, town or city with a population of more than 7,500 according to the most recent official federal census, and (v) any physician, pharmacist, dentist, optometrist, veterinarian, or nurse appointed to a county social services board, local health board, or area mental health board serving one or more counties within which there is located no village, town, or city with a population of more than 7,500 according to the most recent official federal census if:

- (1) The undertaking or contract or series of undertakings or contracts between the village, town, city, county, county social services board, county or city board of education,

local health board or area mental health, mental retardation, and substance abuse board and one of its officials is approved by specific resolution of the governing body adopted in an open and public meeting, and recorded in its minutes and the amount does not exceed ten thousand dollars (\$10,000) for medically related services and ~~five thousand dollars (\$5,000)~~ fifteen thousand dollars (\$15,000) for other goods or services within a 12-month period; and

- (2) The official entering into the contract or undertaking with the unit or agency does not in his official capacity participate in any way or vote; and
- (3) The total annual amount of undertakings or contracts with each official, shall be specifically noted in the audited annual financial statement of the village, town, city, or county; and
- (4) The governing board of any village, town, city, county, county social services board, county or city board of education, local health board, or area mental health, mental retardation, and substance abuse board which undertakes or contracts with any of the officials of their governmental unit shall post in a conspicuous place in its village, town, or city hall, or courthouse, as the case may be, a list of all such officials with whom such undertakings or contracts have been made, briefly describing the subject matter of the undertakings or contracts and showing their total amounts; this list shall cover the preceding 12 months and shall be brought up-to-date at least quarterly."

Sec. 2. This act shall become effective October 1, 1987.

In the General Assembly read three times and ratified this the 7th day of July, 1987.

H.B. 200

CHAPTER 571

AN ACT TO AMEND CHAPTER 115C BY ADDING ARTICLE 21A GOVERNING THE CONFIDENTIALITY OF PERSONNEL FILES OF EMPLOYEES OF LOCAL BOARDS OF EDUCATION AND TO MAKE OTHER CHANGES IN EMPLOYMENT PRACTICES.

The General Assembly of North Carolina enacts:

Section 1. Chapter 115C of the General Statutes is amended by adding a new Article 21A to read:

"Article 21A.

"Privacy of Employee Personnel Records.

"§ 115C-319. *Personnel files not subject to inspection.*-- Personnel files of employees of local boards of education, former employees of local boards of education, or applicants for employment with local boards of education shall not be subject to inspection and examination as authorized by G.S. 132-6. For purposes of this Article, a personnel file consists of any information gathered by the local board of education which employs an individual, previously employed an individual, or considered an individual's application for employment, and which information relates to the individual's application, selection or nonselection, promotion, demotion, transfer, leave, salary, suspension, performance evaluation, disciplinary action, or termination of employment wherever located or in whatever form.

"§ 115C-320. *Certain records open to inspection.*--Each local board of education shall maintain a record of each of its employees, showing the following information with respect to each employee: name, age, date of original employment or appointment, current position, title, current salary, date and amount of most recent increase or decrease in salary, date of most recent promotion, demotion, transfer, suspension, separation, or other change in position classification, and the office or station to which the employee is currently assigned. Subject only to rules and regulations for the safekeeping of records adopted by the local board of education, every person having custody of the records shall permit them to be inspected and examined and copies made by any person during regular business hours. Any person who is denied access to any record for the purpose of inspecting, examining or copying the record shall have a right to compel compliance with the provisions of this section by application to a court of competent jurisdiction for a writ of mandamus or other appropriate relief.

"§ 115C-321. *Confidential information in personnel files; access to information.*-- All information contained in a personnel file, except as otherwise provided in this Chapter, is confidential and shall not be open for inspection and examination except to the following persons:

- (1) The employee, applicant for employment, former employee, or his properly authorized agent, who may examine his own personnel file at all reasonable times in its entirety except for letters of reference solicited prior to employment;

- (2) The superintendent and other supervisory personnel;
- (3) Members of the local board of education and the board's attorney;
- (4) A party by authority of a subpoena or proper court order may inspect and examine a particular confidential portion of an employee's personnel file.

Notwithstanding any other provision of this Chapter, any superintendent may, in his discretion, or shall at the direction of the Board of Education, inform any person or corporation of any promotion, demotion, suspension, reinstatement, transfer, separation, dismissal, employment or nonemployment of any applicant, employee or former employee employed by or assigned to the local board of education or whose personnel file is maintained by the board and the reasons therefor and may allow the personnel file of the person or any portion to be inspected and examined by any person or corporation provided that the board has determined that the release of the information or the inspection and examination of the file or any portion is essential to maintaining the integrity of the board or to maintaining the level or quality of services provided by the board; provided, that prior to releasing the information or making the file or any portion available as provided herein, the superintendent shall prepare a memorandum setting forth the circumstances which he and the board deem to require the disclosure and the information to be disclosed. The memorandum shall be retained in the files of the superintendent and shall be a public record."

Sec. 2. G.S. 115C-47(27) is repealed.

Sec. 3. G.S. 115C-325(f) is amended in the first sentence by deleting the words "and without giving notice and a hearing" and by inserting a new sentence between the first and second sentences to read:

"Before suspending a teacher without pay, the superintendent shall meet with the teacher and give him written notice of the charges against him, an explanation of the bases for the charges, and an opportunity to respond."

Sec. 4. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 7th day of July, 1987.

H.B. 231

CHAPTER 572

AN ACT TO MANDATE THAT LOCAL BOARDS OF
EDUCATION ADOPT POLICIES REGULATING THE USE OF
CORPORAL PUNISHMENT IN THE PUBLIC SCHOOLS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 115C-391 is amended by rewriting the catch line to read:

"Corporal punishment, suspension, or expulsion of pupils.--"

Sec. 2. G.S. 115C-391(a) is rewritten to read:

"(a) Local boards of education shall adopt policies not inconsistent with the provisions of the Constitutions of the United States and North Carolina, governing the conduct of students and establishing procedures to be followed by school officials in suspending or expelling any student, or in disciplining any student if the offensive behavior could result in suspension, expulsion, or the administration of corporal punishment. The policies that shall be adopted for the administration of corporal punishment shall include at a minimum the following conditions:

- (1) Corporal punishment shall not be administered in a classroom with other children present;
- (2) The student body shall be informed beforehand what general types of misconduct could result in corporal punishment;
- (3) Only a teacher, substitute teacher, principal, or assistant principal may administer corporal punishment and may do so only in the presence of a principal, assistant principal, teacher, substitute teacher, teacher aide or assistant, or student teacher, who shall be informed beforehand and in the student's presence of the reason for the punishment; and
- (4) An appropriate school official shall provide the child's parent or guardian with notification that corporal punishment has been administered, and upon request, the official who administered the corporal punishment shall provide the child's parent or guardian a written explanation of the reasons and the name of the second school official who was present.

The board shall publish all the policies mandated by this subsection and make them available to each student and his parent or guardian at the beginning of each school year. Notwithstanding any policy adopted pursuant to this section, school personnel may use reasonable force, including corporal punishment, to control behavior or to remove a person from the scene in those situations when necessary:

- (1) To quell a disturbance threatening injury to others;
- (2) To obtain possession of weapons or other dangerous objects on the person, or within the control, of a student;

(3) For self-defense; or

(4) For the protection of persons or property."

Sec. 3. G.S. 115C-288(e) is amended in the first sentence by inserting between the phrase "of the school" and the period the phrase "pursuant to policies adopted by the local board of education as prescribed by G.S. 115C-391(a)."

Sec. 4. This act is effective upon ratification and applies to all school years beginning with the 1987-88 school year.

In the General Assembly read three times and ratified this the 7th day of July, 1987.

H.B. 298

CHAPTER 573

AN ACT DESIGNATING THE DISTRICT COURT AS THE PROPER DIVISION FOR TRIAL OF AN ALLEGED BREACH OF A SEPARATION AGREEMENT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 7A-244 is amended by deleting the phrase "child support, and child custody" and substituting the phrase "child support, child custody and the enforcement of separation or property settlement agreements between spouses, or recovery for the breach thereof".

Sec. 2. This act shall become effective October 1, 1987. This act applies to any action filed on or after that date. However, the superior court may transfer a pending action to the district court division.

In the General Assembly read three times and ratified this the 7th day of July, 1987.

H.B. 134

CHAPTER 574

AN ACT TO PROVIDE FOR PROTECTION OF THE PUBLIC FROM INACTIVE HAZARDOUS SUBSTANCE OR WASTE DISPOSAL SITES AND TO ESTABLISH THE CAROLINA CLEAN DRINKING WATER FUND.

Whereas, each generation of North Carolina citizens are mere custodians of the State's natural resources; and

Whereas, at least seven hundred inactive hazardous substance or waste disposal sites are in existence across the State of North Carolina; and

Whereas, the State of North Carolina has no active program for locating, monitoring, and rendering such sites nonhazardous to the public health and the environment; and

Whereas, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, Pub. L. 96-510, 94 Stat. 2767, 42 U.S.C. 9601 *et seq.*, as amended, and the Superfund Amendments and Reauthorization Act of 1986, Pub. L. 99-499, 100 Stat. 1613, as amended, are intended to address and clean up only those few sites with high scores on the National Priority List; and

Whereas, such federal acts contemplate that the states will take an active and central role in the cleanup of those sites not placed on such National Priority List; and

Whereas, the Constitution of the State of North Carolina provides that it shall be the policy of this State "to conserve and protect its lands and waters for the benefit of all its citizenry" and to "control and limit the pollution of our air and water"; Now, therefore,

The General Assembly of North Carolina enacts:

Section 1. Article 9 of Chapter 130A of the General Statutes is amended by designating G.S. 130A-290 as "Part 1. Definitions" and by designating G.S. 130A-291 through G.S. 130A-309 as "Part 2. Solid and Hazardous Waste Management".

Sec. 2. Article 9 of Chapter 130A of the General Statutes is amended by adding a new Part to read:

"Part. 3. Inactive Hazardous Sites

"§ 130A-310. *Definitions.*--Unless a different meaning is required by the context, the following definitions shall apply throughout this Part:

(1) 'CERCLA/SARA' means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, Pub. L. 96-510, 94 Stat. 2767, 42 U.S.C. 9601 *et seq.*, as amended, and the Superfund Amendments and Reauthorization Act of 1986, Pub. L. 99-499, 100 Stat. 1613, as amended.

(2) 'Hazardous substance' means hazardous substance as defined in CERCLA/SARA.

(3) 'Inactive hazardous substance or waste disposal site' or 'site' means any facility, structure, or area where disposal of any hazardous substance or waste has occurred. Such sites do not include hazardous waste facilities permitted or in interim status under this Article, or sites currently undergoing remedial action under CERCLA/SARA, or sites undergoing voluntary remedial action with the approval of the Department.

(4) 'Operator' means the person responsible for the overall operation of an inactive hazardous substance or waste disposal site.

(5) 'Owner' means any person who owns an inactive hazardous substance or waste disposal site, or any part thereof.

(6) 'Release' means release as defined in the CERCLA/SARA.

(7) 'Remedy' or 'Remedial Action' means remedy or remedial action as defined in CERCLA/SARA.

(8) 'Remove' or 'Removal' means remove or removal as defined in CERCLA/SARA.

(9) 'Responsible party' means any person who is liable pursuant to G.S. 130A-310.7."

"§ 130A-310.1. *Identification, inventory, and monitoring of inactive hazardous substance or waste disposal sites.*--(a) Within six months of the effective date of this section the Department shall develop and implement a program for locating, cataloguing, and monitoring all inactive hazardous substance or waste disposal sites in North Carolina. The Secretary shall compile and maintain an inventory of all such sites based on information submitted by owners, operators, and responsible parties, and on data obtained directly by the Secretary. The inventory shall include any evidence of contamination to the air, surface water, groundwater, surface or subsurface soils, or waste streams. The inventory shall indicate the extent of any actual damage or potential danger to public health or to the environment resulting from such contamination.

(b) Within six months of the date this section becomes effective, the Commission shall develop and make available a format and checklist for submission of data relevant to inactive hazardous substance or waste disposal sites. Within 90 days thereafter, each owner, operator, or responsible party shall submit to the Secretary all such site data as is known or readily available to him. The owner, operator, or responsible party shall certify under oath that, to the best of his knowledge and belief, such data is complete and accurate.

(c) Whenever the Secretary determines that there is a release, or substantial threat of a release, into the environment of a hazardous substance from an inactive hazardous substance or waste disposal site, the Secretary may, in addition to any other powers he may have, order any responsible party to conduct such monitoring, testing, analysis, and reporting as the Secretary deems reasonable and necessary to ascertain the nature and extent of any hazard posed by the site. Written notice of any order issued pursuant to this section shall be given to all persons subject to the order as set out in G.S. 130A-310.3(c). The Secretary, prior to the entry of any such order, shall solicit the cooperation of the responsible party.

(d) If a person fails to submit data as required in subsection (b) of this section or violates the requirements or schedules in an order issued pursuant to subsection (c) of this section, the Secretary may

institute an action for injunctive relief, irrespective of all other remedies at law, in the superior court of the county where the violation occurred or where a defendant resides.

(e) Whenever a person ordered to take any action pursuant to this section is unable or fails to do so, or if the Secretary, after making a reasonable attempt, is unable to locate any responsible party, the Secretary may take such action. The cost of any action by the Secretary pursuant to this section may be paid from the Carolina Clean Drinking Water Fund, subject to a later action for reimbursement pursuant to G.S. 130A-310.7. The provisions of subdivisions (a)(1) to (a)(3) of G.S.130A-310.6 shall apply to any action taken by the Secretary pursuant to this section.

"§ 130A-310.2. *Inactive Hazardous Waste Sites Priority List.*--No later than six months after the date on which this section becomes effective, the Commission shall develop a system for the prioritization of inactive hazardous substance or waste disposal sites based on the extent to which such sites endanger the public health and the environment. The Secretary shall apply the prioritization system to the inventory of sites to create and maintain an Inactive Hazardous Waste Site Priority List, which shall rank all inactive hazardous substance or waste disposal sites in decreasing order of danger. This list shall identify the location of each site and the type and amount of hazardous substances or waste known or believed to be located on the site. The first such list shall be published within two years after the date that this section becomes effective, with subsequent lists to be published at intervals of not more than two years thereafter. The Secretary shall notify owners, operators, and responsible parties of sites listed on the Inactive Hazardous Waste Sites Priority List of their ranking on the list. The Inactive Hazardous Sites Priority List shall be used by the Department in determining budget requests and in allocating any State appropriation which may be made for remedial action, but shall not be used so as to impede any other action by the Department, or any remedial or other action for which funds are available.

"§ 130A-310.3. *Remedial action programs for inactive hazardous substance or waste disposal sites.*--(a) The Secretary may issue a written declaration, based upon findings of fact, that an inactive hazardous substance or waste disposal site endangers the public health or the environment. After issuing such a declaration, and at any time during which the declaration is in effect, the Secretary shall be responsible for:

- (1) monitoring the inactive hazardous substance or waste disposal site;
- (2) developing a plan for public notice and for community and local government participation in any inactive hazardous substance or waste disposal site remedial action program to be undertaken;
- (3) approving an inactive hazardous substance or waste disposal site remedial action program for the site;
- (4) coordinating the inactive hazardous substance or waste disposal site remedial action program for the site; and
- (5) ensuring that the hazardous substance or waste disposal site remedial action program is completed.

(b) Where possible, the Secretary shall work cooperatively with any owner, operator, responsible party, or any appropriate agency of the State or federal government to develop and implement the inactive hazardous substance or waste disposal site remedial action program. The Secretary shall not take action under this section to the extent that the Secretary of Natural Resources and Community Development, or the Environmental Management Commission, or the Commissioner of Agriculture, or the Pesticide Board has assumed jurisdiction pursuant to Articles 21 or 21A of Chapter 143 of the General Statutes.

(c) Whenever the Secretary has issued such a declaration, and at any time during which the declaration is in effect, the Secretary may, in addition to any other powers he may have, order any responsible party:

- (1) to develop an inactive hazardous substance or waste disposal site remedial action program for the site subject to approval by the Department, and
- (2) to implement the program within reasonable time limits specified in the order.

Written notice of such an order shall be provided to all persons subject to the order personally or by certified mail. If given by certified mail, notice shall be deemed to have been given on the date appearing in the return of the receipt. If giving of notice cannot be accomplished either personally or by certified mail, notice shall be given as provided in G.S. 1A-1, Rule 4(j).

(d) In any inactive hazardous substance or waste disposal site remedial action program implemented hereunder, the Secretary shall ascertain the most nearly applicable cleanup standard as would be applied under CERCLA/SARA, and shall seek federal approval of any such program to insure concurrent compliance with federal standards. State standards may exceed and be more comprehensive than such federal standards. The Secretary shall consult with the Secretary of Natural Resources and Community Development to assure concurrent

compliance with applicable standards set by the Environmental Management Commission.

"§ 130A-310.4. *Public participation in the development of the remedial action plan.*--(a) Within 10 days after the Secretary issues a declaration pursuant to G.S. 130A-310.3, he shall notify in writing the local board of health and the local health director having jurisdiction in the county or counties in which an inactive hazardous substance or waste disposal site is located that the site may endanger the public health or environment and that a remedial action plan is being developed. The Secretary shall involve the local health director in the development of the remedial action plan.

(b) Before approving any remedial action plan, the Secretary shall make copies of the proposed plan available for inspection as follows:

- (1) A copy of the plan shall be provided to the local health director.
- (2) A copy of the proposed plan shall be filed with the register of deeds in the county or counties in which the site is located.
- (3) A copy of the plan shall be provided to each public library located in the county or counties in which the site is located.
- (4) The Secretary may place copies of the plan in other locations so as to assure the availability thereof to the public.

In addition, copies of the plan shall be available for inspection and copying at cost by the public during regular business hours in the offices of the agency within the Department with responsibility for the administration of the remedial action program.

(c) Before approving any remedial action plan, the Secretary shall give notice of the proposed plan as follows:

- (1) A notice and summary of the proposed plan shall be published weekly for a period of three consecutive weeks in a newspaper having general circulation in the county or counties where the site is located.
- (2) Notice that a proposed remedial action plan has been developed shall be given by first class mail to persons who have requested such notice. Such notice shall state the locations where a copy of the remedial action plan is available for inspection. The Department shall maintain a mailing list of persons who request notice pursuant to this section.

(d) The Secretary may conduct a public meeting to explain the proposed plan and alternatives to the public.

(e) At least 45 days from the latest date on which notice is provided pursuant to subsection (c) of this section shall be allowed for the receipt of written comment on the proposed remedial action plan prior to its approval. If a public hearing is held pursuant to subsection (f) of this section, at least 20 days will be allowed for receipt of written comment following the hearing prior to the approval of the remedial action plan.

(f) If the Secretary determines that significant public interest exists, he shall conduct a public hearing on the proposed plan and alternatives. The Department shall give notice of the hearing at least 30 days prior to the date thereof by:

- (1) Publication as provided in subdivision (c)(1) of this section, with first publication to occur not less than 30 days prior to the scheduled date of the hearing; and
- (2) First class mail to persons who have requested notice as provided in subdivision (c)(2) of this section.

(g) The Commission on Health Services shall adopt rules prescribing the form and content of the notices required by this section. The proposed remedial action plan shall include a summary of all alternatives considered in the development of the plan. A record shall be maintained of all comment received by the Department regarding the remedial action plan.

" § 130A-310.5. *Authority of the Secretary with respect to sites which pose an imminent hazard.*--(a) An imminent hazard exists whenever the Secretary determines, that there exists a condition caused by an inactive hazardous substance or waste disposal site, including a release or a substantial threat of a release into the environment of a hazardous substance from the site, which is causing serious harm to the public health or environment, or which is likely to cause such harm before a remedial action plan can be developed. Whenever the Secretary determines that an imminent hazard exists he may, in addition to any other powers he may have, without notice or hearing, order any known responsible party to take immediately any action necessary to eliminate or correct the condition, or the Secretary, in his discretion, may take such action without issuing an order. Written notice of any order issued pursuant to this section shall be provided to all persons subject to the order as set out in G.S. 130A-310.3(c). Unless the time required to do so would increase the harm to the public health or the environment, the Secretary shall solicit the cooperation of responsible parties prior to the entry of any such order. The provisions of subdivisions (1) to (3) of G.S. 130A-310.6(a) shall apply to any action taken by the Secretary pursuant to this section, and any

such action shall be considered part of a remedial action program, the cost of which may be recovered from any responsible party.

(b) If a person violates the requirements or schedules in an order issued pursuant to this section, the Secretary may institute an action for injunctive relief, irrespective of all other remedies at law, in the superior court of the county where the violation occurred or where a defendant resides.

(c) The cost of any action by the Secretary pursuant this section may be paid from the Carolina Clean Drinking Water Fund, or the Emergency Hazardous Waste Site Remedial Fund established pursuant to G.S. 130A-306, subject to a later action for reimbursement pursuant to G.S. 130A-310.7.

" § 130A-310.6. State action upon default of responsible parties or when no responsible party can be located.--(a) Whenever a person ordered to develop and implement an inactive hazardous substance or waste disposal site remedial action program is unable or fails to do so within the time specified in the order, the Secretary may develop and implement or cause to be developed and implemented such a program. The cost of developing and implementing a remedial action program pursuant to this section may be paid from the Carolina Clean Drinking Water Fund, subject to a later action for reimbursement pursuant to G.S. 130A-310.7.

- (1) The Department is authorized and empowered to use any staff, equipment or materials under its control or provided by other cooperating federal, State or local agencies and to contract with any agent or contractor it deems appropriate to develop and implement the remedial action program. State agencies shall provide to the maximum extent feasible such staff, equipment, and materials as may be available for developing and implementing a remedial action program.
- (2) Upon completion of any inactive hazardous substance or waste disposal remedial action program, any State or local agency that has provided personnel, equipment, or material shall deliver to the Department a record of expenses incurred by the agency. The amount of the incurred expenses shall be disbursed by the Secretary to each such agency. The Secretary shall keep a record of all expenses incurred for the services of State personnel and for the use of the State's equipment and material.
- (3) As soon as feasible or after completion of any inactive hazardous substance or waste disposal site remedial action program, the Secretary shall prepare a statement of all

expenses and costs of the program expended by the State and issue an order demanding payment from responsible parties. Written notice of such an order shall be provided to all persons subject to the order personally or by certified mail. If given by certified mail, notice shall be deemed to have been given on the date appearing on the return of the receipt. If giving of notice cannot be accomplished either personally or by certified mail, notice shall then be given as provided in G.S. 1A-1, Rule 4(j).

(b) If the Secretary, after declaring that an inactive hazardous substance or waste disposal site may endanger the public health or the environment, is unable, after making a reasonable attempt, to locate any responsible party, the Department may develop and implement a remedial action program for the site as provided in subsection (a)(1) and (2) of this section. If responsible parties are subsequently located, the Secretary may issue an order demanding payment from such persons in the manner set forth in subdivision (a)(3) of this section for the necessary expenses incurred by the Department for developing and implementing the remedial action program. If the persons subject to such an order refuse to pay the sum expended, or fail to pay such sum within the time specified in the order, the Secretary shall bring an action in the manner set forth in G.S. 130A-310.7.

" § 130A-310.7. *Action for reimbursement; liability of responsible parties.*--(a) Notwithstanding any other provision or rule of law, and subject only to the defenses set forth in this subsection, any person who:

- (1) discharges or deposits; or
- (2) contracts or arranges for any discharge or deposit; or
- (3) accepts for discharge or deposit any hazardous substance; the result of which discharge or deposit is the existence of an inactive hazardous substance or waste disposal site,

shall be considered a responsible party; except that the following shall not be considered a responsible party: an innocent landowner who is a bona fide purchaser of the inactive hazardous substance or waste disposal site without knowledge or without a reasonable basis for knowing that hazardous substance or waste disposal had occurred or, a person whose interest or ownership in the inactive hazardous substance or waste disposal site is based on or derived from a security interest in the property. A responsible party shall be directly liable to the State for any or all of the reasonably necessary expenses of developing and implementing a remedial action program for such site. The Secretary shall bring an action for reimbursement of the Carolina Clean Drinking Water Fund in the name of the State in the superior

court of the county in which the site is located to recover such sum and the cost of bringing the action. The State must show that a danger to the public health or the environment existed and that the State complied with the provisions of this Part.

- (b) There shall be no liability under this section for a person who can establish by a preponderance of the evidence that the danger to the public health or the environment caused by the site was caused solely by:
 - (1) an act of God; or
 - (2) an act of war; or
 - (3) an intentional act or omission of a third party (but this defense shall not be available if the act or omission is that of an employee or agent of the defendant, or if the act or omission occurs in connection with a contractual relationship with the defendant); or
 - (4) any combination of the above causes.

" § 130A-310.8. *Recordation of inactive hazardous substance or waste disposal sites.*--(a) After determination by the Department of the existence and location of an inactive hazardous substance or waste disposal site, the owner of the real property on which the site is located, within 180 days after official notice to him to do so, shall submit to the Department a survey plat of areas designated by the Department which has been prepared and certified by a professional land surveyor, and entitled 'NOTICE OF INACTIVE HAZARDOUS SUBSTANCE OR WASTE DISPOSAL SITE'. The Notice shall include a legal description of the site that would be sufficient as a description in an instrument of conveyance, shall meet the requirements of G.S. 47-30 for maps and plats, and shall identify:

- (1) the location and dimensions of the disposal areas with respect to permanently surveyed benchmarks; and
- (2) the type, location, and quantity of hazardous substances disposed of on the site, to the best of the owner's knowledge.

Where an Inactive Hazardous Substance or Waste Disposal Site is located on more than one parcel or tract of land, a composite map or plat showing all such sites may be recorded.

(b) After the Department approves and certifies the Notice, the owner of the site shall file the certified copy of the Notice in the register of deeds' office in the county or counties in which the land is located.

(c) The register of deeds shall record the certified copy of the Notice and index it in the grantor index under the names of the owners of the lands.

(d) In the event that the owner of the site fails to submit and file the Notice required by this section within the time specified, the Secretary may prepare and file such Notice. The costs thereof may be recovered by the Secretary from any responsible party. In the event that an owner of a site who is not a responsible party submits and files the Notice required by this section, he may recover the reasonable costs thereof from any responsible party.

(e) When an inactive hazardous substance or waste disposal site is sold, leased, conveyed, or transferred, the deed or other instrument of transfer shall contain in the description section, in no smaller type than that used in the body of the deed or instrument, a statement that the property has been used as a hazardous substance or waste disposal site and a reference by book and page to the recordation of the Notice.

(f) A Notice of Inactive Hazardous Substance or Waste Disposal Site shall be cancelled by the Secretary after the hazards have been eliminated. The Secretary shall send to the register of deeds of the county where the Notice is recorded a statement that the hazards have been eliminated and request that the Notice be cancelled of record. The Secretary's statement shall contain the names of the landowners as shown in the Notice and reference the plat book and page where the Notice is recorded. The register of deeds shall record the Secretary's statement in the deed books and index it on the grantor index in the name of the landowner as shown in the Notice and on the grantee index in the name 'Secretary of the North Carolina Department of Human Resources'. The register of deeds shall make a marginal entry on the Notice showing the date of cancellation and the book and page where the Secretary's statement is recorded, and the register shall sign the entry. If a marginal entry is impracticable because of the method used to record maps and plats, the register of deeds shall not be required to make a marginal entry.

(g) This section shall apply with respect to any facility, structure, or area where disposal of any hazardous substance or waste has occurred which is undergoing voluntary remedial action pursuant to this Part.

"§ 130A-310.9. *Maximum financial responsibility.*--(a) No one owner, operator, or other responsible party who voluntarily participates in the implementation of a remedial action program under G.S. 130A-310.3 or G.S. 130A-310.5 may be required to pay in excess of three million dollars (\$3,000,000) for the cost of implementing such remedial action program at a single inactive

hazardous substance or waste disposal site. The limitation of liability contained in this section applies only to the cost of implementation of the program and does not apply to the cost of the development of the remedial action plan.

" § 130A-310.10. *Annual reports.*--(a) The Secretary shall present an annual report to the General Assembly which shall include at least the following:

- (1) the Inactive Hazardous Waste Sites Priority List;
- (2) a list of remedial action plans requiring State funding through the Carolina Clean Drinking Water Fund;
- (3) a comprehensive budget to implement these remedial action plans and the adequacy of the Carolina Clean Drinking Water Fund to fund the cost of said plans;
- (4) a prioritized list of sites that are eligible for remedial action under CERCLA/SARA together with recommended remedial action plans and a comprehensive budget to implement such plans. The budget for implementing a remedial action plan under CERCLA/SARA shall include a statement as to any appropriation that may be necessary to pay the State's share of such plan;
- (5) a list of sites and remedial action plans undergoing voluntary cleanup with Departmental approval;
- (6) a list of sites and remedial action plans that may require State funding, a comprehensive budget if implementation of these possible remedial action plans is required, and the adequacy of the Carolina Clean Drinking Water Fund to fund the possible costs of said plans;
- (7) a list of sites which pose an imminent hazard; and
- (8) a comprehensive budget to develop and implement remedial action plans for sites that pose imminent hazards and that may require State funding, and the adequacy of the Carolina Clean Drinking Water Fund.

(b) The annual reports required by this section shall be made by the Secretary beginning with the next legislative session following the effective date of this section.

" § 130A-310.11. *Carolina Clean Drinking Water Fund created.*-- There is established under the control and direction of the Department the Carolina Clean Drinking Water Fund. This fund shall be a revolving fund consisting of any monies appropriated for such purpose by the General Assembly or available to it from grants, fees, and other monies paid to it or recovered by or on behalf of the Department.

"§ 130A-310.12. *Administrative procedure.*--Except as may be otherwise specifically provided the provisions of Chapter 150B apply to this Part."

Sec. 3. G.S. 130A-303(b) is amended by adding at the end the following:

"Where the imminent hazard is caused by an inactive hazardous substance or waste disposal site, the Secretary shall follow the procedures set forth in G.S. 130A-310.5."

Sec. 4. This act shall not be construed to obligate the General Assembly to make any appropriation to implement the provisions of this act; nor shall it be construed to obligate the Secretary to implement any monitoring program, testing program, or inactive hazardous substance or waste disposal site remedial action program for which no funding is available, from appropriations or otherwise.

Sec. 5. The Commission shall adopt, pursuant to Chapter 150B of the General Statutes, administrative rules for the implementation of this act not later than six months after enactment. Such rules may be the same as or similar to the federal rules for implementation of CERCLA/SARA.

Sec. 6. This act shall become effective July 1, 1987.

In the General Assembly read three times and ratified this the 8th day of July, 1987.

H.B. 415

CHAPTER 575

AN ACT AMENDING CHAPTER 632 OF THE 1985 SESSION LAWS RELATING TO MINORITY AND WOMEN'S BUSINESS ENTERPRISE PARTICIPATION REQUIREMENTS.

The General Assembly of North Carolina enacts:

Section 1. Section 1(b) of Chapter 632 of the 1985 Session Laws is amended by deleting "Provided that nothing in the specifications or requirements allow the award of contracts or subcontracts to be made to other than contractors or subcontractors who submit the lowest responsible bid and meet the bonding requirements of G.S. 44A-26." which appears in lines seven through eleven thereof and replacing the same with "if applicable, to the lowest responsible bidder or bidders meeting these and other specifications."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 8th day of July, 1987.

AN ACT TO PROVIDE THAT THE REGISTER OF DEEDS MAY AMEND AN APPLICATION FOR A MARRIAGE LICENSE AND THE RETURN OF AN OFFICIATING OFFICER AT THE MARRIAGE TO REFLECT THE NAME CHANGE OF PARTY TO THE MARRIAGE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 51-18.1 reads as rewritten:

" § 51-18.1. *Correction of errors in names in application or license; amendment of names in application or license.*--(a) When it shall appear to the register of deeds of any county in this State that the name of either or both parties to a marriage is incorrectly stated on an application for a marriage license, or upon a marriage license issued thereunder, or upon a return or certificate of an officiating officer, the register of deeds is authorized to correct such record or records to show the true name or names of the parties to the marriage upon being furnished with an affidavit signed by one or both of the applicants for the marriage license, accompanied by affidavits of at least two other persons who know the true name or names of the person or persons seeking such correction.

(b) When the name of a party to a marriage has been changed by court order as the result of a legitimation action or other cause of action, and the party whose name is changed presents a signed affidavit to the register of deeds indicating the name change and requesting that the application for a marriage license, the marriage license, and the marriage certificate of the officiating officer be amended by substituting the changed name for the original name, the register of deeds may amend the records as requested by the party, provided the other party named in the records consents to the amendment."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 8th day of July, 1987.

AN ACT TO PROVIDE FOR THE STATEWIDE APPLICATION OF AN ACT AUTHORIZING CERTAIN COUNTIES AND THE MUNICIPALITIES THEREIN TO UNDERTAKE ECONOMIC DEVELOPMENT ACTIVITIES.

The General Assembly of North Carolina enacts:

Section 1. Section 4 of Chapter 639, Session Laws of 1985, as amended by Chapters 846, 848, 849, 858, 874, 911, 916, and 921, Session Laws of 1985, is rewritten to read: "Sec. 4. This act shall become effective January 1, 1986."

Sec. 1.1. G.S. 158-7.1 is amended by adding a new subsection to read:

"(g) Subsections (b) through (f) of this section do not apply to Buncombe County or any municipality located within that county."

Sec. 1.2. Chapter 639, Session Laws of 1985, is amended by adding a new section to read:

"Sec. 3.1. Section 3 of this act does not apply to Buncombe County or any municipality located within that county."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 9th day of July, 1987.

S.B. 569

CHAPTER 578

AN ACT TO AMEND LAW REGARDING SETOFF DEBT COLLECTION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105A-2(1)c. is amended by deleting the phrase "Chapter 108, Article 2, Part 5," and substituting: "Chapter 108A, Article 2, Part 6,".

Sec. 2. G.S. 105A-2(1) is amended by adding a new paragraph to read:

"r. The North Carolina Department of Human Resources when in the performance of its intentional program violation collection duties under the Food Stamp Program enabled by Chapter 108A, Article 2, Part 5, and any county operating the same Program at the local level, when and only to the extent such a county is in the performance of Food Stamp Program intentional program violation collection functions."

Sec. 3. This act shall become effective January 1, 1988.

In the General Assembly read three times and ratified this the 9th day of July, 1987.

H.B. 42

CHAPTER 579

AN ACT TO INCREASE THE SUPERVISION FEE FOR PROBATION AND PAROLE.

The General Assembly of North Carolina enacts:

Section 1. Section 1 of Chapter 859, 1985 Session Laws, is amended by deleting "G.S. 15A-1343(a)(6)" and substituting "G.S. 15A-1343(b)(6)".

Sec. 2. G.S. 15A-1343(c1) is amended in the first sentence by deleting the phrase "fee of ten dollars (\$10.00)" and substituting "fee of fifteen dollars (\$15.00)".

Sec. 3. G.S. 15A-1374(c) is amended in the first sentence by deleting the phrase "fee of ten dollars (\$10.00)" and substituting "fee of fifteen dollars (\$15.00)".

Sec. 4. This act shall become effective August 1, 1987.

In the General Assembly read three times and ratified this the 9th day of July, 1987.

H.B. 548

CHAPTER 580

AN ACT TO PROVIDE THAT ON GENERAL ELECTION BALLOTS, NAMES IN MULTI-SEAT RACES ARE PRINTED ON THE BALLOT WITHIN A POLITICAL PARTY IN ALPHABETICAL ORDER.

The General Assembly of North Carolina enacts:

Section 1. G.S. 163-140(b) is amended by adding a new subdivision to read:

"(8) Order of candidates in multi-seat races. In a multi-seat race, within each political party that has nominated more than one candidate, the names of candidates shall appear on the ballot in alphabetical order from A to Z within that party's column."

Sec. 2. This act shall become effective with respect to elections held on or after September 1, 1987.

In the General Assembly read three times and ratified this the 9th day of July, 1987.

H.B. 761

CHAPTER 581

AN ACT TO REPEAL THE 90-DAY FAILURE LAW AND MAKE A CHANGE IN THE LAW REGULATING INFRACTIONS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-24(c) is amended by rewriting the first paragraph of that subsection, which paragraph begins with the language 'For the purpose of' and ends with the language 'the driving record of the defendant.' to read: "For the purpose of this Article the term 'conviction' shall mean a final conviction of a criminal

offense or a determination that a person is responsible for an infraction. Also for the purpose of this Article an order of forfeiture of cash in the full amount of a bond required by Article 26 of Chapter 15A of the General Statutes, which forfeiture has not been vacated, shall be equivalent to a conviction."

Sec. 2. G.S. 20-7.2 is repealed.

Sec. 3. G.S. 20-24.2 is amended by designating the existing section as subsection (a) and adding a new subsection (b) to read:

"(b) The reporting requirement of this section and the revocation mandated by G.S. 20-24.1 do not apply to offenses in which an order of forfeiture of a cash bond is entered and reported to the Division pursuant to G.S. 20-24."

Sec. 4. G.S. 20-24.1(b)(1) is rewritten to read:

"(1) disposes of the charge in the trial division in which he failed to appear when the case was last called for trial or hearing; or".

Sec. 5. G.S. 20-181, which establishes the penalty for failure to dim headlights, is amended by inserting "may, upon a determination of responsibility for the offense, be required to pay a penalty of not more than ten dollars (\$10.00)" in place of "shall, upon conviction thereof, be fined not more than ten dollars (\$10.00) or imprisoned more than 10 days."

Sec. 6. Sections 1 and 2 of this act are effective upon ratification and shall apply only to offenses committed on or after that date. Section 3 of this act shall be effective upon ratification, and shall apply to offenses committed on or after that date but revocation orders entered under G.S. 20-24.1 in cases in which bail and collateral deposited to secure a defendant's appearance is forfeited shall be rescinded by the Division as soon as is reasonably possible. Sections 4 and 5 are effective October 1, 1987, and shall apply only to offenses committed on or after that date.

In the General Assembly read three times and ratified this the 9th day of July, 1987.

H.B. 840

CHAPTER 582

AN ACT TO IMPROVE PROGRAMS FOR CERTIFYING WASTEWATER TREATMENT PLANT OPERATORS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 90A-40(b) is rewritten to read:

"(b) A certificate may be issued in an appropriate grade without examination to any person who is properly registered on the 'National Association of Boards of Certification' reciprocal registry who meets all other requirements of rules adopted under this Article."

Sec. 2. G.S. 90A-40(c) is repealed.

Sec. 3. G.S. 90A-42 reads as rewritten:

"The Wastewater Treatment Plant Operators Certification Commission, in establishing procedures for implementing the requirements of this Article, shall impose the following schedule of fees:

- (1) Examination, including Certificate, ~~\$15.00~~ \$25.00;
- (2) Temporary Certificate, ~~\$25.00~~ \$35.00;
- (3) Temporary Certification Renewal, \$50.00;
- (4) Conditional Certificate, \$25.00;
- (5) ~~Voluntary Conversion Certificate, \$10.00~~;
- (6) Reciprocity Certificate, ~~\$25.00~~ \$50.00;
- (7) Annual Renewal, ~~Fee, five dollars (\$5.00)~~ \$15.00;
- (8) Replacement of Certificate, ~~five dollars (\$5.00)~~ \$15.00;
- (9) Late Payment of Annual ~~Fee Renewal, five dollars (\$5.00),~~ \$15.00 penalty in addition to the regular fee called for in (7) ~~hereinabove~~ all current and past due fees; and
- (10) Mailing List ~~Fees, upon request for mailing lists of wastewater treatment plant operators and/or plants, shall be made available upon payment of fees at a rate of five dollars (\$5.00) per 100 names of certified operators and/or facilities, with a minimum payment of fifty dollars (\$50.00).~~ Charges--The Wastewater Treatment Plant Operators Certification Commission may provide mailing lists of certified wastewater treatment plant operators and of wastewater treatment plants to persons who request such lists. The charge for such lists shall be five dollars (\$5.00) per 100 names of certified operators or treatment plants, with a minimum charge of fifty dollars (\$50.00)."

Sec. 4. This act shall become effective August 1, 1987.

In the General Assembly read three times and ratified this the 9th day of July, 1987.

AN ACT TO REMOVE THE REQUIREMENT THAT AN ABSENTEE BALLOT BE NOTARIZED AND SUBSTITUTE A REQUIREMENT THAT IT BE WITNESSED BY AT LEAST TWO PERSONS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 163-231(a1) is repealed.

Sec. 2. G.S. 163-231(a) reads as rewritten:

"(a) Procedure for Voting Absentee Ballots. In the presence of an ~~officer authorized to administer oaths having an official seal~~ two other persons who are at least 18 years of age, the voter shall:

- (1) Mark his ballots, or cause them to be marked by ~~such officer~~ one of such persons in his presence according to his instruction;
- (2) Fold each ballot separately, or cause each of them to be folded in his presence;
- (3) Place the folded ballots in the container-return envelope and securely seal it, or have this done in his presence;
- (4) Make and ~~subscribe the affidavit~~ the certificate printed on the container-return envelope according to the provisions of G.S. 163-229(b).

~~The officer administering the oath shall then complete the form on the container-return envelope and affix his seal, if any, in the place indicated. The persons in whose presence the ballot was marked shall sign the certificate as witnesses, and shall indicate their address. When thus executed, the sealed container-return envelope, with the ballots enclosed, shall be transmitted in accordance with the provisions of subsection (b) of this section to the chairman of the county board of elections who issued the ballots.~~

~~In the case of voters who are members of the armed forces of the United States, as defined in G.S. 163-245, the signature of any commissioned officer or noncommissioned officer of the rank of sergeant in the army, petty officer in the navy, or equivalent rank in other branches of the armed forces, as a witness to the execution of any certificate required by this or any other section of this Article to be under oath shall have the force and effect of the jurat of an officer with a seal fully authorized to take and administer oaths in connection with absentee ballots.~~

~~In the case of registered voters who are residents of North Carolina but temporarily outside of the United States, the procedure of subsection (a1) of this section may be followed in lieu of the procedure of this subsection."~~

Sec. 3. G.S. 163-229(b)(2) reads as rewritten:

"(2) On the other side shall be printed the return address of the chairman of the county board of elections and the following affidavit certificate:

~~"Affidavit or~~ Certificate of Absentee or Sick Voter

State of

County of

I,, do ~~solemnly swear~~ certify that I am a resident and registered voter in precinct, County, North Carolina; that on the day of an election,, 19 (check whichever of the following statements is correct.)

☐ I will be absent from the county in which I reside.

☐ Due to sickness or physical disability, or incarceration as a misdemeanor, I will be unable to travel to the voting place in the precinct in which I reside.

I further ~~swear~~ certify that I made application for absentee ballots, and that I marked the ballots enclosed herein, or that they were marked for me in my presence and according to my instructions. I understand it is a felony to falsely sign this certificate.

.....
(Signature of voter)

.....
Signature of Witness #1

.....
Signature of Witness #2

.....
Address of Witness #1

.....
Address of Witness #2

~~Sworn to and subscribed before me this day of, 19~~

.....
~~(Signature and seal of officer
administering oath)~~

~~My commission (if any) expires~~

.....
~~(Title of officer)~~

~~If you are a resident of North Carolina who is residing temporarily outside the United States, you do not have to have this affidavit or certificate signed by an officer administering an oath. Instead, check the box below and sign the following certification.~~

~~☐ I am a resident of North Carolina but residing temporarily outside the United States. I certify that I made application for absentee ballots, and that I marked the ballots enclosed herein. I understand it is a felony to falsely sign this certificate.~~

.....
~~(Signature of voter)"~~

Sec. 4. G.S. 163-227.2(c) reads as rewritten:

"(c) If the application is properly filled out, the chairman, member, supervisor of elections of the board, or employee of the board of elections, authorized by the board, shall enter the voter's name in the register of absentee ballot applications and ballots issued; shall furnish the voter with the instruction sheets called for by G.S. 163-229(c); shall furnish the voter with the ballots to which the application for absentee ballots applies; and shall furnish the voter with a container-return envelope. The voter thereupon shall comply with the provisions of G.S. 163-231(a) except that he shall deliver the container-return envelope to the chairman, member, supervisor of elections of the board, or an employee of the board of elections, authorized by the board, immediately after making and subscribing the affidavit certificate printed on the container-return envelope as provided in G.S. 163-229(b). All actions required by this subsection ~~(c)~~ shall be performed in the office of the board of elections. For the purposes of this section only, the chairman, member, supervisor of elections of the board, or full-time employee, authorized by the board, ~~is authorized to administer the oath required for the affidavit on the container-return envelope, in such case, no seal shall be required, but the chairman, member, supervisor of elections of the board, or full-time employee, authorized by the board, shall sign the application and certificate as the witness and indicate the official title held by him or her, and shall charge no fee of any voter for taking the acknowledgment required under this section. Notwithstanding G.S. 163-231(a), in the case of this subsection, only one witness shall be required on the certificate.~~"

Sec. 5. G.S. 163-248(c)(2) reads as rewritten:

"(2) On the other side shall be printed the return address of the chairman of the county board of elections and the following certificate:

'Certificate of Absentee Voter

I,, do hereby certify that I am a resident and qualified voter in precinct, County, North Carolina, and that I am [check whichever of the following statements is correct]

- ☐ Serving in the armed forces of the United States
- ☐ The spouse of a member of the armed forces of the United States residing outside the county of my spouse's residence
- ☐ A disabled war veteran in a United States government hospital
- ☐ A civilian attached to and serving outside the United States with the armed forces of the United States
- ☐ A member of the Peace Corps

I further certify that I am affiliated with the Party. [To be completed only if applicant seeks to vote in the primary of the political party to which he belongs.]

I further certify that the following is my official address:

.....
[Unit (Co., Sq., Trp., Bn., etc.), Governmental Agency, or Office]

.....
[Military Base, Station, Camp, Fort, Ship, Airfield, etc.]

.....
[Street number, APO, or FPO number]

.....
[City, postal zone, State, and zip code]

I further certify that I made application for absentee ballots and that I marked the ballots enclosed herein, or that they were marked for me in my presence and according to my instruction. I understand it is a felony to falsely sign this certificate.

Witness my hand in the presence of [Insert ~~name and rank of witnessing officer~~ names and addresses of witnesses] this day of....., 19.....

.....
(Signature of voter)

Witness:

(Signature of witnessing officer):

Signature of witness #1

Address of witness #1

Signature of witness #2

Address of witness #2

Rank or title of witnessing officer:

Unit to which witnessing officer is assigned:

Note: This certificate ~~may~~ must be witnessed by any ~~commissioned officer or any noncommissioned officer of the rank of sergeant in the Army, petty officer in the Navy, or equivalent rank in other branches of the armed forces of the United States~~ two persons who are 18 years of age or older, and must contain their signatures and addresses."

Sec. 6. G.S. 163-250(a) is rewritten to read:

"(a) Procedure for Voting Absentee Ballots. In the presence of ~~any commissioned officer or noncommissioned officer of the rank of sergeant in the army, petty officer in the navy, or equivalent rank in other branches of the armed forces of the United States~~ two persons who are at least 18 years of age, the voter shall:

- (1) Mark his ballots, or cause them to be marked by one of such persons in his presence according to his instructions.
- (2) Fold each ballot separately, or cause each of them to be folded in his presence.
- (3) Place the folded ballots in the container-return envelope and securely seal it, or have this done in his presence.
- (4) Make and subscribe the certificate printed on the container-return envelope according to the provisions of G.S. 163-248(c).

~~The officer witnessing the voter's signature shall then complete the form on the container-return envelope by signing his name in the appropriate place and entering his rank or title and the designation of the unit to which he is assigned. The persons in whose presence the ballots were marked shall sign the certificate as witnesses, and shall give their addresses."~~

Sec. 7. G.S. 163-275(16) is rewritten to read:

"(16) For any person falsely to make the certificate provided by G.S. 162-229(b)(2) or G.S. 163-250(a)."

Sec. 8. G.S. 163-226.3(a)(5) is repealed.

Sec. 9. G.S. 163-274 is amended by adding a new subdivision to read:

"(5a) For any person to be a witness under G.S. 163-231(a) or G.S. 163-250(a) in any primary or election in which the person is a candidate for nomination or election;".

Sec. 10. G.S. 163-226.3(a)(7) reads as rewritten:

"(7) Except as provided in subsections (1), (2), (3), and (4) of this section, G.S. 163-231(a), G.S. 163-250(a), and G.S. 163-227.2(e), for any voter to permit another person to assist him in marking his absentee ballot, to be in the voter's presence when a voter votes an absentee ballot, or to observe the voter mark his absentee ballot."

Sec. 11. This act shall become effective with respect to elections held on or after January 1, 1988.

In the General Assembly read three times and ratified this the 9th day of July, 1987.

H.B. 988

CHAPTER 584

AN ACT TO CREATE A RELIEF FUND FOR RESCUE SQUAD WORKERS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-183.7(a) and (a1) are amended by substituting "eighty cents (80¢)" for "seventy-five cents (75¢)".

Sec. 2. G.S. 20-183.7(a1) is amended by substituting "two dollars and twenty cents (\$2.20)" for "two dollars and fifteen cents (\$2.15)".

Sec. 3. G.S. 20-183.7(c) is amended by adding a new subdivision to read:

"(3) Five cents (5¢) of the fee for the valid inspection sticker collected pursuant to subsections (a) and (a1) shall be transferred each quarter of the year to the North Carolina Commissioner of Insurance, for the purpose of funding the Rescue Squad Workers' Relief Fund under Article 5 of General Statute Chapter 118."

Sec. 4. General Statute Chapter 118 is amended by rewriting the title to read: "Firemen's and Rescue Squad Workers' Relief and Pension Funds."

Sec. 5. General Statute Chapter 118 is amended by adding a new Article to read:

"Article 5.

"Rescue Squad Workers' Relief Fund.

"§ 118-60. *Definitions.*--As used in this Article:

(1) 'Association' means the North Carolina Association of Rescue and Emergency Medical Services, Inc.

(2) 'Board' means the Board of Trustees of the Fund.

(3) 'EMS' means emergency medical services.

(4) 'Fund' means the Rescue Squad Workers' Relief Fund.

(5) 'Secretary-Treasurer' means the Secretary-Treasurer of the Association.

"§ 118-61. *Rescue Squad Workers' Relief Fund; trustees; disbursement of funds.*--(a) The money paid into the hands of the Commissioner of Insurance pursuant to G.S. 20-183.7(c)(3) shall be known and remain as the 'Rescue Squad Workers' Relief Fund', and shall be used for the purposes set forth in this Article.

(b) The Executive Committee of the Association shall be the Board of Trustees of the Fund. The Board shall consist of the Commander, Vice-Commander, Secretary-Treasurer, and two immediate past Commanders of the Association. The Commander shall be the Chairman of the Board.

(c) The Commissioner of Insurance shall have exclusive control of the funds realized under the provisions of this Article and G.S. 20-183.7(c), and shall disburse the funds to the Association only for following purposes:

(1) To safeguard any rescue or EMS worker in active service from financial loss, occasioned by sickness contracted or injury received while in the performance of his or her duties as a rescue or EMS worker.

- (2) To provide a reasonable support for those persons actually dependent upon the services of any rescue or EMS worker who may lose his or her life in the service of his or her town, county, city, or the State, either by accident or from disease contracted or injury received by reason of such service. The amount is to be determined according to the earning capacity of the deceased.
- (3) To award scholarships to children of members, deceased members or retired members in good standing, for the purpose of attending a four year college or university, and for the purpose of attending a two year course of study at a community college or an accredited trade or technical school, any of which is located in the State of North Carolina. Continuation of the payment of educational benefits for children of active members shall be conditioned on the continuance of active membership in the rescue or EMS service by the parent or parents.
- (4) To pay death benefits to those persons who were actually dependent upon any member killed in the line of duty.
- (5) Notwithstanding any other provision of law, no expenditures shall be made pursuant to subdivisions (1), (2), (3), and (4) of this subsection unless the Board has certified that such expenditures will not render the Fund actuarially unsound for the purpose of providing the benefits set forth in subdivisions (1), (2), (3), and (4). If, for any reason, funds made available for subdivisions (1), (2), (3), and (4) are insufficient to pay in full any benefit, the benefits pursuant to subdivisions (1), (2), (3), and (4) shall be reduced pro rata for as long as the amount of insufficient funds exists. No claims shall accrue with respect to any amount by which a benefit under subdivisions (1), (2), (3), and (4) has been reduced.

" § 118-62. *Membership eligibility.*--(a) Any member of a rescue squad or EMS service who is eligible for membership in the Association and who has attended a minimum of 36 hours of training and meetings in the last calendar year; and each rescue squad or EMS service whose members are eligible for membership in the Association who has filed a roster certifying to the Secretary-Treasurer who certifies to the Commissioner of Insurance by January 1 of each calendar year that all eligible members have met the requirements, shall be eligible for the Fund. Any eligible member who, in the actual discharge of his or her duties as rescue or EMS personnel, is (1) made sick by disease contracted or (2) becomes disabled, shall be

entitled to the benefits from the Fund.

(b) Any organized rescue squad or EMS service in North Carolina holding itself ready for duty may, upon compliance with the requirements of the constitution and by-laws of the Association, be eligible for membership in the Fund.

(c) The line of duty entitling one to participate in the Fund shall be so construed as to mean actual rescue or EMS duty only.

" § 118-63. *Accounting; reports; audits.*--The Board shall keep a correct account of all monies received and disbursed by the Board; and shall annually file a report with the Commissioner of Insurance at such time and in such form prescribed by the Commissioner of Insurance and the State Auditor. The Board shall be bonded by the sum of any money total for which it is responsible. The State Auditor shall annually conduct an audit of the Fund and the Board's administration of the Fund.

" § 118-64. *Justification of claim.*--The eligibility of the claimant and the justification of each claim shall be certified by the chief or chief officer of the local department before a magistrate, notary public, or other officer authorized to administer oaths, on a form furnished by the Secretary-Treasurer. This form must be accompanied by a certificate of the attending physician on a form also to be furnished by the Secretary-Treasurer. Each person receiving benefits from the Fund shall file an annual justification of claim form with the Secretary-Treasurer stating that the need for the claim still exists.

" § 118-65. *Application for benefits.*--Applications for benefits from the Fund shall be made to the Secretary-Treasurer under the following conditions and procedure: Within 30 days after the contracting of a disease or the occurrence of accident for which benefits are sought, the chief or chief officer of the local department shall notify the Secretary-Treasurer in writing that the person applying for benefits is a member of the Fund and request the necessary forms from the Secretary-Treasurer's office to be submitted for the benefits.

" § 118-66. *Administration costs.*--The Association shall withhold three percent (3%) from the money received pursuant to G.S. 20-183.7(c) for the administration of the Fund. The Commissioner of Insurance shall withhold two percent (2%) from the money received pursuant to G.S. 20-183.7(c) for the administration of the Fund."

Sec. 6. Sections 1 through 3 of this act shall become effective September 1, 1987. Sections 4 and 5 shall become effective October 1, 1987. This section is effective upon ratification.

In the General Assembly read three times and ratified this the 9th day of July, 1987.

H.B. 992

CHAPTER 585

AN ACT TO AMEND CHAPTER 159, THE SAME BEING THE LOCAL GOVERNMENT FINANCE ACT, TO AUTHORIZE GENERAL OBLIGATION BONDS AND NOTES TO BE MADE PAYABLE ON DEMAND OR TENDER AND TO BEAR VARIABLE INTEREST RATES, TO PERMIT A DESIGNEE OF THE GOVERNING BOARD OF THE ISSUING UNIT TO APPROVE THE SALE PRICE OF BONDS, TO MAKE CERTAIN AMENDMENTS IN THE PROCEDURE FOR THE SALE OF BONDS, AND TO PERMIT THE SALE OF BONDS AT LESS THAN THE FACE AMOUNT THEREOF.

The General Assembly of North Carolina enacts:

Section 1. Article 4 of Chapter 159 of the General Statutes being the Local Government Bond Act, is amended by adding a new section to read:

"§ 159-79. *Variable rate demand bonds and notes.*--(a) Notwithstanding any provisions of this Chapter to the contrary, including particularly, but without limitation, the provisions of G.S. 159-65, G.S. 159-123 to G.S. 159-127, inclusive, G.S. 159-130, G.S. 159-138, G.S. 159-162, G.S. 159-164 and G.S. 159-172, a unit of local government, in fixing the details of general obligation bonds to be issued pursuant to this Article or general obligation notes to be issued pursuant to Article 9 of this Chapter, may provide that such bonds or notes

- (1) may be made payable from time to time on demand or tender for purchase by the owner provided a Credit Facility supports such bonds or notes, unless the Commission specifically determines that a Credit Facility is not required upon a finding and determination by the Commission that the proposed bonds or notes will satisfy the conditions set forth in G.S. 159-52;
- (2) may be additionally supported by a Credit Facility;
- (3) may be made subject to redemption prior to maturity, with or without premium, on such notice, at such time or times, at such price or prices and with such other redemption provisions as may be stated in the resolution fixing the details of such bonds or notes or with such variations as may be permitted in connection with a Par Formula provided in such resolution;

- (4) may bear interest at a rate or rates that may vary as permitted pursuant to a Par Formula and for such period or periods of time, all as may be provided in such resolution; and
 - (5) may be made the subject of a remarketing agreement whereby an attempt is made to remarket the bonds to new purchases prior to their presentment for payment to the provider of the Credit Facility or to the issuing unit.
- (b) No Credit Facility, repayment agreement, Par Formula or remarketing agreement shall become effective without the approval of the Commission.
- (c) As used in this section, the following terms shall have the following meanings:
- (1) 'Credit Facility' means an agreement entered into by an issuing unit with a bank, savings and loan association or other banking institution, an insurance company, reinsurance company, surety company or other insurance institution, a corporation, investment banking firm or other investment institution, or any financial institution providing for prompt payment of all or any part of the principal (whether at maturity, presentment or tender for purchase, redemption or acceleration), redemption premium, if any, and interest on any bonds or notes payable on demand or tender by the owner issued in accordance with this section, in consideration of the issuing unit agreeing to repay the provider of such Credit Facility in accordance with the terms and provisions of a repayment agreement. A bank may include a foreign bank or branch or agency thereof the obligations of which bear the highest rating of at least one nationally-recognized rating service and do not bear a rating below the highest rating of any nationally-recognized rating service which rates such particular obligations.
 - (2) 'Par Formula' shall mean any provision or formula adopted by the issuing unit to provide for the adjustment, from time to time, of the interest rate or rates borne by any such bonds or notes so that the purchase price of such bonds or notes in the open market would be as close to par as possible.
- (d) If the aggregate principal amount repayable by the issuing unit under a repayment agreement is in excess of the aggregate principal amount of bonds or notes secured by the related Credit Facility, whether as a result of the inclusion in the Credit Facility of a provision for the payment of interest for a limited period of time or the

payment of a redemption premium or for any other reason, then the amount of unissued bonds or notes during the term of such repayment agreement shall not be less than the amount of such excess, unless the payment of such excess is otherwise provided for by agreement of the issuing unit subject to the approval of the Commission. In determining whether or not to grant such approval, the Commission shall consider, in addition to such other factors it may deem relevant, the ability of the issuing unit to pay such excess from other sources without incurring additional indebtedness secured by a pledge of the faith and credit of the issuing unit or levying additional taxes and the adequacy of such other sources to accomplish such purpose.

(e) Any bonds or notes issued pursuant to this section may be sold by the Commission at public or private sale according to such procedures as the Commission may prescribe and at such prices as the Commission determines to be in the best interest of the issuing unit, subject to the approval of the governing board of the issuing unit or one or more persons designated by resolution of the governing board of the issuing unit to approve such prices."

Sec. 2. The first sentence of G.S. 159-65(6) of The Local Government Bond Act is rewritten to read:

"Any bond may be made payable on demand or tender for purchase as provided in G.S. 159-79, and any bond may be made subject to redemption prior to maturity, with or without premium, on such notice and at such time or times and with such redemption provisions as may be stated therein."

Sec. 3. G.S. 159-123(c) of The Local Government Finance Act is rewritten to read:

"(c) When the issuing unit wishes to have a private sale of bonds, the governing board of the issuing unit shall adopt and file with the Commission a resolution requesting that the bonds be sold at private sale without advertisement to any purchaser or purchasers thereof, at such prices as the Commission determines to be in the best interest of the issuing unit, subject to the approval of the governing board of the issuing unit or one or more persons designated by resolution of the governing board of the issuing unit to approve such prices. Upon receipt of a resolution requesting a private sale of bonds, the Commission may offer them to any purchaser or purchasers without advertisement, and may sell them at any price the Commission deems in the best interest of the issuing unit, subject to the approval of the governing board of the issuing unit or the person or persons designated by resolution of the governing board of the issuing unit to approve such prices. For purposes of this subsection, any resolution of the governing board of the issuing unit which designates a person

or persons to approve any price or prices shall also establish a minimum purchase price and a maximum interest rate or maximum interest cost and such other provisions relating to approval as it may determine. Notwithstanding any provisions of this Chapter 159 to the contrary, the bonds may be sold at private sale at not less than ninety-eight percent (98%) of the face value of the bonds plus one hundred percent (100%) of accrued interest."

Sec. 4. The first paragraph of G.S. 159-124 of The Local Government Finance Act is rewritten to read:

"The date of sale shall be fixed by the secretary in consultation with the issuing unit. Prior to the sale date, the secretary shall take such steps as are most likely, in his opinion, to give notice of the sale to all potential bidders within or without this State or the United States of America, taking into consideration the size and nature of the issue."

Sec. 5. G.S. 159-124(3) of The Local Government Finance Act is amended by adding before the period the words: ", which place or places may be within or without this State or the United States of America".

Sec. 6. The first sentence of G.S. 159-125(a) of The Local Government Finance Act is rewritten to read:

"Except for revenue bonds, no bid for less than ninety-eight percent (98%) of the face value of the bonds plus one hundred percent (100%) of accrued interest may be entertained."

Sec. 7. The foregoing sections of this act shall be deemed to provide an additional and alternative method for the doing of the things authorized thereby and shall be regarded as supplemental and additional to powers conferred by other laws, and shall not be regarded as in derogation of any powers now existing.

Sec. 8. Nothing in this act shall be construed to impair the obligation of any bond, note or coupon issued under The Local Government Finance Act and outstanding on the effective date of this act.

Sec. 9. If any provision of this act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of this act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

Sec. 10. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 9th day of July, 1987.

H.B. 994

CHAPTER 586

AN ACT TO AMEND G.S. 159-65 OF THE LOCAL GOVERNMENT BOND ACT IN CONNECTION WITH THE ISSUANCE OF BONDS THE INTEREST ON WHICH IS OR MAY BE INCLUDABLE IN GROSS INCOME FOR PURPOSES OF FEDERAL INCOME TAX.

The General Assembly of North Carolina enacts:

Section 1. G.S. 159-65 of the Local Government Bond Act is hereby amended by adding to the last paragraph thereof a second sentence to read as follows:

"Such subdivisions (3) and (4) also shall not apply to bonds the interest on which is or may be includable in gross income for purposes of federal income tax, provided that the dates on which such bonds shall be stated to mature shall be approved by the Commission and the Commission may require that the payment of all or any part of the principal of and interest and any premium on such bonds be provided for by mandatory redemption of principal prior to maturity, a sinking fund, a Credit Facility, as defined in G.S. 159-79, or such other means as may be satisfactory to the Commission."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 9th day of July, 1987.

H.B. 995

CHAPTER 587

AN ACT CONFIRMING THE RIGHT OF THE STATE, THE UNIVERSITY OF NORTH CAROLINA AND LOCAL GOVERNMENTAL UNITS AND ANY AGENCY OR INSTRUMENTALITY THEREOF TO ISSUE BONDS OR OTHER OBLIGATIONS THE INTEREST ON WHICH IS OR MAY BE SUBJECT TO FEDERAL INCOME TAXATION.

The General Assembly of North Carolina enacts:

Section 1. It is hereby found, determined and declared that:

(1) from time to time bills have been introduced in the United States Congress providing that the interest on all or certain state and municipal bonds or debt obligations, whether issued by or on behalf of states or local governmental units, be subject to federal income taxation; and

(2) the Tax Reform Act of 1986 requires, in certain circumstances, the inclusion in the gross income of the recipient thereof of interest on bonds or obligations issued by or on behalf of certain state or local governmental units for purposes of federal

income tax which heretofore would have been exempt from federal income taxation.

Sec. 2. Nothing in any act, general, special or private, shall be deemed to limit or restrict the right of the State or any agency or instrumentality thereof, or The University of North Carolina or any agency or instrumentality thereof, or any county, city, town, special district, authority or other political subdivision or local governmental unit or any agency or instrumentality thereof, to issue, or have issued on its behalf, bonds or obligations the interest income on which is or may be subject to federal income taxation.

Sec. 3. The interest on any such bonds or obligations shall maintain its existing exemption from State income taxation, or other taxation, if any, including, but not limited to, the tax on intangible personal property now imposed by the State, notwithstanding that such interest may be or become subject to federal income taxation as a result of legislative action by the federal government.

Sec. 4. If the provisions of this act are inconsistent with the provisions of any other laws, the provisions of this act shall be controlling.

Sec. 5. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 9th day of July, 1987.

H.B. 996

CHAPTER 588

**AN ACT ESTABLISHING THE NORTH CAROLINA FEDERAL
TAX REFORM ALLOCATION COMMITTEE IN RESPONSE TO
AND IN THE MANAGEMENT OF FEDERAL RESTRICTIONS
ON PRIVATE ACTIVITY BONDS AND LOW-INCOME
HOUSING TAX CREDITS.**

The General Assembly of North Carolina enacts:

Section 1. *Legislative Findings.* The General Assembly finds and determines that the Tax Reform Act of 1984 established a federal volume limitation upon the aggregate amount of "private activity bonds" that may be issued by each state; that, pursuant to Section 103(n) of the Internal Revenue Code of 1954, as amended, a previous Governor of North Carolina issued Executive Order 113 proclaiming a formula for allocating the federal volume limitation for North Carolina; that on October 22, 1986, the Tax Reform Act of 1986, hereinafter referred to as the "Tax Reform Act", was enacted; that the Tax Reform Act (i) establishes a new unified limitation for private

activity bonds on a state by state basis, (ii) establishes a new definition of the types of private activity bonds to be included under those new limitations, (iii) establishes a new low-income housing credit to induce the construction of and the improvement of housing for low-income people, and (iv) limits the aggregate use of this low-income housing credit on a state by state basis; that the Tax Reform Act provides for federal formulas for the allocation of these "state by state" resources, and also provides for states which cannot use the federal formula for allocation to set allocation procedures and formulas which are more appropriate for the individual states; that the Tax Reform Act gives authority for the legislature of each state to formulate and execute plans for allocation; and that Section 146 of the Internal Revenue Code of 1986, as amended, and Section 42 of the Internal Revenue Code of 1986, as amended, will require continued inquiry and study in the ways in which North Carolina can best and most fairly manage and utilize resources provided therein.

Sec. 2. *North Carolina Federal Tax Reform Allocation Committee.* The North Carolina Federal Tax Reform Allocation Committee, hereinafter referred to as the "Committee", is hereby established. The Committee is a continuation of the Interim Private Activity Bond Allocation Committee established under Executive Order 28 and amended under Executive Order 31 and the North Carolina Federal Tax Reform Allocation Committee established under Executive Order 37. The Secretary of the Department of Commerce, the Executive Assistant to the Governor for Budget Management, and the Treasurer of the State of North Carolina shall constitute the membership of this Committee. The Secretary of the Department of Commerce shall serve as Chairman of the Committee.

Sec. 3. *Duties.* The Committee may perform the following duties:

(1) Manage the allocation of tax exempt private activity bonds and low-income housing credits and receive advice from bond issuers, elected officials, and the General Assembly.

(2) Continue to monitor bond markets, economic development financing trends, housing markets, and tax incentives available to induce events and programs favorable to North Carolina, its cities and counties, and individual citizens.

(3) Continue to study the ways in which North Carolina can best and most fairly manage and utilize the allocation of private activity bonds and low-income housing credits.

(4) Report to the Governor, Lieutenant Governor, and the Speaker of the House of Representatives as requested and on not less than an annual basis.

Sec. 4. Allocation. To provide for the orderly and prompt issuance of private activity bonds there are hereby proclaimed formulas for allocating the unified volume limitation and the state housing credit ceiling. The unified volume limitation for all issues in North Carolina shall be considered as a single resource to be allocated under this act. The Committee shall issue allocations of the unified volume limitation and shall issue allocations of the State Housing Credit Ceiling. The Committee shall set forth procedures for making such allocations and in the making of such allocations shall take into consideration the best interest of the State of North Carolina with regard to the economic development and general prosperity of the people of North Carolina.

Sec. 5. Effective Date. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 9th day of July, 1987.

H.B. 1099

CHAPTER 589

AN ACT TO ASSURE COOPERATION FROM APPROPRIATE PARTIES IN THE VERIFICATION OF DISPOSABLE INCOME FOR CHILD SUPPORT WITHHOLDING PURPOSES AND TO MAKE OTHER CHANGES IN THE INCOME WITHHOLDING STATUTES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 110-136.3(a) reads as rewritten:

"(a) Required contents of support orders. All child support orders, civil or criminal, entered or modified in the State beginning October 1, 1986, shall:

- (1) Require the obligor to keep the clerk of court or IV-D agency informed of his current residence and mailing address ~~and of the name and address of any payor of his disposable income and of the amount and effective date of any substantial change in his disposable income, and ;~~
- (2) ~~Provide for implementation of income withholding procedures as provided in this Article.~~ Include a provision that an obligor will be subject to income withholding under a separate order if arrearages equal to the support payable for one month accumulate or upon request of the obligor;

- (3) Require the obligor to cooperate fully with the initiating party in the verification of the amount of his disposable income;
- (4) Require the obligee or custodial party to keep the obligor informed of the current residence and mailing address of the child; and
- (5) If the case is a IV-D case, require the obligor to keep the IV-D agency informed of the name and address of any payor of his disposable income and of the amount and effective date of any substantial change in his disposable income."

Sec. 2. G.S. 110-136.8(b) reads as rewritten:

"(b) Payor's responsibilities. A payor who has been properly served with a notice to withhold is required to:

- (1) Withhold from the obligor's disposable income and, within 10 days of the date the obligor is paid, send to the clerk of superior court specified in the notice, the amount specified in the notice, but in no event more than the amount allowed by G.S. 110-136.6; however, if a lesser amount of disposable income is available for any pay period, the payor shall either:
 - (a) compute and send the appropriate amount to the clerk of court, using the percentages as provided in G.S. 110-136.6,
 - or (b) request the initiating party to inform the payor of the proper amount to be withheld for that period;
- (2) Continue withholding until further notice from the IV-D agency or the clerk of superior court;
- (3) Withhold for child support before withholding pursuant to any other legal process under State law against the same disposable income;
- (4) Begin withholding from the first payment due the obligor in the first pay period that occurs 14 days following the date the notice of the obligation to withhold was served on the payor;
- (5) Promptly notify the obligee in a IV-D case, or the clerk of superior court in a non-IV-D case, in writing:
 - a. If there is more than one child support withholding for the obligor;
 - b. When the obligor terminates employment or otherwise ceases to be entitled to disposable income from the payor, and provide the obligor's last known address, and the name and address of his new employer, if known;
 - c. Of the payor's inability to comply with the withholding for any reason; and

- (6) Cooperate fully with the initiating party in the verification of the amount of the obligor's disposable income."

Sec. 3. This act shall become effective October 1, 1987.

In the General Assembly read three times and ratified this the 9th day of July, 1987.

S.B. 294

CHAPTER 590

AN ACT TO RAISE THE LEVEL OF EXPENDITURE ON PUBLIC BUILDING PROJECTS ON WHICH INFORMAL COMPETITIVE BID PROCEDURES MAY BE USED.

The General Assembly of North Carolina enacts:

Section 1. The first sentence of G.S. 143-129 is amended by deleting the language "thirty thousand dollars (\$30,000)" and substituting "fifty thousand dollars (\$50,000)".

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 10th day of July, 1987.

S.B. 343

CHAPTER 591

AN ACT TO PROVIDE THAT A BUSINESS SHALL MAKE AVAILABLE INFORMATION NEEDED TO LOCATE AN ABSENT PARENT FOR THE PURPOSE OF COLLECTING CHILD SUPPORT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 110-139 is amended as follows:

- (1) by designating the text of the first paragraph as subsection (a);
- (2) by designating the text of the second paragraph as subsection (b); and
- (3) by adding a new subsection to read:

"(c) Notwithstanding any other provision of law making such information confidential, a business doing business in this State or incorporated under the laws of this State shall provide the Department with the following information upon certification by the Department that the information is needed to locate a parent for the purpose of collecting child support: full name, social security account number, date of birth, home address, wages, and number of dependents listed for tax purposes."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 10th day of July, 1987.

S.B. 539

CHAPTER 592

AN ACT TO PROVIDE FOR CONFIDENTIALITY OF MEDICAL DATABASE INFORMATION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 131E-210(b) reads as rewritten:

"(b) The General Assembly finds that as a result of rising medical care costs and the concern expressed by medical care providers, medical consumers, third-party payers, and health care planners involved with planning for the provision of medical care, there is an urgent need to understand patterns and trends in the use and cost of these services. It is the intent and purpose of this Article to establish an information base to be used to improve the appropriate and efficient usage of medical care services, while at the same time maintaining an acceptable quality of health care services in this State. This is to be accomplished by compiling a uniform set of data and disseminating aggregate data, including but not limited to price and utilization data. It is the intent of the General Assembly to require that the information necessary for a review and comparison of cost, utilization patterns, and quality of medical services be supplied to the Medical Database Commission by all medical care providers and third-party payers both public and private. It is the intent of the General Assembly that any duplication in the collection of medical care data shall be eliminated as recommended by the Medical Database Commission. The information is to be compiled by a statewide clearinghouse and made available in an aggregate form to interested persons, including medical care providers, payors, medical care consumers, and health care planners to improve the decision-making processes regarding access, identified needs, patterns of medical care, price and use of appropriate medical care services. The Commission shall take steps to assure that patient confidentiality shall be protected. However, the limited use of the social security numbers of patients as provided in G.S. 131E-212(b) (5) and (6) and G.S. 131E-213 is vital to insuring the degree of accuracy of the information base contemplated by this Article and to achieve the purposes of the General Assembly in enacting this Article."

Sec. 2. The first paragraph of G.S. 131E-212 is designated as subsection (a).

Sec. 3. G.S. 131E-212(b) reads as rewritten:

"(b) The Commission may adopt rules after holding required public hearings and complying with the other procedural requirements of Chapter 150A of the General Statutes, governing the acquisition, compilation, and dissemination of all data collected pursuant to this Article. The rules shall provide, at a minimum that:

- (1) The Commissioner of Insurance shall require all third-party payers, including licensed insurers, medical and hospital service corporations, health maintenance organizations, and self-funded employee health plans to provide to the Commission the claims data, as required by this Article. The data shall be provided in the most useful form possible to the data processor, which may include copies of the UB-82 to report hospital inpatient claims information, datatape, or other electronic media.
- (2) This data shall include the following: patient's age, sex, zip code, third-party coverage, principal and other diagnoses, date of admission, procedure and discharge date, principal and other procedures, total charges and components of those charges, attending physician identification number, and hospital identification number. In accordance with the findings of the General Assembly set forth in G.S. 131E-210(b), data provided to the Commission may include the patient's social security number but the handling and disclosure of such number shall be in accordance with G.S. 131E-212(b)(5) and (6) and G.S. 131E-213.
- (3) The Commission shall ensure that adequate measures have been taken to provide system security for all data and information acquired under this Article.
- (4) The data shall be collected in the most efficient and cost-effective manner and the providers of the data shall be reimbursed for the reasonable cost incurred in providing for the actual data to the Commission as determined by the Commission.
- (5) The Commission shall develop procedures to assure the confidentiality of patient records. Patient names, addresses, and other ~~personal identifiers~~ patient identifying information shall be omitted from the database. For purposes of this section, the social security numbers of patients shall not be considered to be patient identifying information, although the further dissemination of such numbers shall be governed by the provisions of G.S. 131E-212(b)(6) and G.S. 131E-213.

- (6) A data provider may obtain data it has submitted as well as other aggregate data, but it may not access data submitted by another provider and which is limited only to that provider. In no event may a data provider obtain data regarding the social security number of a patient except in instances when that data was originally submitted by the requesting provider. Prior to the release or dissemination of any data, in any form, the Commission shall permit providers an opportunity to verify the accuracy of any information pertaining to the provider.
- (7) The Commission shall charge users for the cost of data preparation for information that is beyond the routine data disseminated by the Commission.
- (8) Time limits shall be set for the submission and review of data by data providers and penalties shall be established for failure to submit and review the data within the established time."

Sec. 4. G.S. 131E-213 reads as rewritten:

" § 131E-213. *North Carolina Medical Database not public records.*--

The individual forms, computer tapes, or other forms of data collected by and furnished to the Commission or data processor shall not be public records under Chapter 132 of the General Statutes and shall not be subject to public inspection. After approval by the Commission, the compilations prepared for release or dissemination from the data collected, except for a report prepared for an individual data provider containing information concerning only its transactions, shall be public records. ~~The confidentiality of patient's individual personal identifiers, such as name or address in conjunction with a social security or patient identification number, is to be protected and the laws of this State with regard to patient confidentiality apply.~~ The confidentiality of patient identifying information is to be protected and the pertinent statutes, rules, and regulations of the State of North Carolina and of the Federal Government relative to patient confidentiality shall apply. For purposes of this section, patient identifying information means the name, address, social security number or similar information by which the identity of the patient can be determined with reasonable accuracy and speed either directly or by reference to other publicly available information. The term does not include a patient identifying number assigned by a program. In any event, the patient identifying information (as defined in this section) obtained shall not be further disclosed, and may not be used in connection with any legal, administrative, supervisory, or other action whatsoever with respect to such patient. The Commission shall

hold such information in confidence, is prohibited from taking any administrative, investigative, or other action with respect to any individual patient on the basis of such information, and is prohibited from identifying, directly or indirectly, any individual patient in any report of scientific research or long-term evaluation, or otherwise disclosing patient identities in any manner. Further, patient identifying information submitted to the Commission which would directly or indirectly identify any patient may not be disclosed by the Commission either voluntarily or in response to any legal process whether federal or State unless authorized by an appropriate court of competent jurisdiction granted after application showing good cause therefor. In assessing good cause the court shall weigh the public interest and the need for disclosure against the injury to the patient, to the physician-patient relationship, and to the treatment services. Upon the granting of such order, the court, in determining the extent to which any disclosure of all or any part of any record is necessary, shall impose appropriate safeguards against unauthorized disclosure."

Sec. 5. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 10th day of July, 1987.

S.B. 616

CHAPTER 593**AN ACT TO PERMIT THE CITY OF ASHEBORO TO DISPOSE
OF CERTAIN REAL PROPERTY BY PRIVATE NEGOTIATION
AND SALE.**

The General Assembly of North Carolina enacts:

Section 1. Notwithstanding Article 12 of Chapter 160A of the General Statutes, the City of Asheboro may convey by negotiation and private sale its interest in real property owned by the City.

Sec. 2. This act is effective upon ratification, but shall expire December 31, 1988.

In the General Assembly read three times and ratified this the 10th day of July, 1987.

S.B. 634

CHAPTER 594**AN ACT TO EXEMPT THE TOWN OF SOUTHERN PINES
FROM CERTAIN ZONING NOTICE REQUIREMENTS.**

The General Assembly of North Carolina enacts:

Section 1. Notwithstanding G.S. 160A-384 or any other provision of law, a city or town shall not be required to mail any notice of proposed zoning classification actions to any property owner or other person.

Sec. 2. This act applies only to the Town of Southern Pines.

Sec. 3. This act is effective upon ratification, but expires December 31, 1988.

In the General Assembly read three times and ratified this the 10th day of July, 1987.

S.B. 662

CHAPTER 595

AN ACT TO MODIFY THE PROVISIONS FOR LEAVE TIME OF
OCCUPATIONAL EDUCATION TEACHERS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 115C-302(a)(2) reads as rewritten:

"(2) Occupational Education Teachers. State-allotted months of employment to local boards of education as provided by the State Board of Education shall be used for the employment of teachers of occupational education for a term of employment as determined by the local boards of education. Salary payments to these occupational education teachers made through the central payroll system shall be made monthly on the statewide payroll date, as provided in G.S. 115C-12(18). Salary payments to these occupational education teachers made through a local payroll system may be made monthly at the end of each calendar month of service or on the statewide payroll date for these employees, at the discretion of the local board: Provided, that local boards shall not reduce the term of employment for any vocational agriculture teacher personnel position that was 12 calendar months for the 1982-83 school year for any school year thereafter: Provided, that any individual teacher employed for a term of 10 calendar months may be paid in 12 monthly installments if the teacher so requests on or before the first day of the school year. Such request shall be filed in the administrative unit which employs the teacher. The payment of the annual salary in 12 installments instead of 10 shall not increase or decrease said annual salary nor in any other way alter the contract made between the teacher and the said administrative unit. Included within their term of employment shall be the same rate of annual vacation leave and legal holidays provided under the same conditions as set out in subdivision (1) above, but in no event shall the total workdays for a 10-month employee exceed 200 days in a 10-month schedule and the workweek shall constitute five days for all

occupational teachers regardless of the employment period.

Occupational education teachers who are employed for 11 or 12 months may, with prior approval of the principal, work on annual leave days designated in the school calendar and take those annual leave days during the 11th or 12th month of employment.

No deductions shall be made from salaries of teachers of vocational agriculture and home economics whose salaries are paid in part from State and federal vocational funds while in attendance upon community, county and State meetings called for the specific purpose of promoting the agricultural interests of North Carolina, when such attendance is approved by the superintendent of the administrative unit and the State Director of Vocational Education."

Sec. 2. This act shall become effective July 1, 1987.

In the General Assembly read three times and ratified this the 10th day of July, 1987.

S.B. 841

CHAPTER 596

AN ACT TO ADAPT THE MENTAL HEALTH ADMISSIONS LAW TO PERMIT EMERGENCY ADMISSIONS FOR PERSONS NEEDING IMMEDIATE HOSPITALIZATION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 122C-262 is rewritten to read:

"§ 122C-262. *Special emergency procedure for individuals needing immediate hospitalization.*--Anyone, including a law enforcement officer, who has knowledge of an individual who is subject to inpatient commitment according to the criteria of G.S. 122C-261(a) and who requires immediate hospitalization to prevent harm to himself or others, may transport the individual directly to an area facility or other place, including a State facility for the mentally ill, for examination by a physician or eligible psychologist, in accordance with G.S. 122C-263(a). If the individual meets the criteria required in G.S. 122C-261(a), the physician or eligible psychologist shall so certify in writing before any official authorized to administer oaths. The certificate shall also state the reason that the individual requires immediate hospitalization.

If the physician or eligible psychologist executes the oath, appearance before a magistrate shall be waived. The physician or eligible psychologist shall send a copy of the certificate to the clerk of superior court by the most reliable and expeditious means. If it cannot be reasonably anticipated that the clerk will receive the copy

within 24 hours (excluding Saturday, Sunday and holidays) of the time that it was signed, the physician or eligible psychologist shall also communicate his findings to the clerk by telephone.

Anyone, including a law enforcement officer if necessary, may transport the individual to a 24-hour facility described in G.S. 122C-252 for examination and treatment pending a district court hearing. If there is no area 24-hour facility and if the respondent is indigent and unable to pay for his care at a private 24-hour facility, the law enforcement officer or other designated person providing transportation shall take the respondent to a State facility for the mentally ill designated by the Commission in accordance with G.S. 143B-147(a)(1)a and immediately notify the clerk of superior court of his actions. The physician's or eligible psychologist's certificate shall serve as the custody order and the law enforcement officer or other designated person shall provide transportation in accordance with the provisions of G.S. 122C-251.

Respondents received at a 24-hour facility under the provisions of this section shall be examined by a second physician in accordance with G.S. 122C-266. After receipt of notification that the District Court has determined reasonable grounds for the commitment, further proceedings shall be carried out in the same way as all other respondents under this Part."

Sec. 2. G.S. 122C-264 is amended by adding a subsection to read:

"(b1) Upon receipt of a physician's or eligible psychologist's certificate that a respondent meets the criteria of G.S. 122C-261(a) and that immediate hospitalization is needed, the clerk of superior court of the county where the 24-hour facility is located shall submit the certificate to the Chief District Court Judge. The court shall review the certificate within 24 hours (excluding Saturday, Sunday and holidays) for a finding of reasonable grounds in accordance with 122C-261(b). The clerk shall notify the 24-hour facility of the court's findings by telephone and shall proceed as set forth in (b), (c) and (f) of this section."

Sec. 3. G.S. 122C-263(b)(3) is repealed.

Sec. 4. G.S. 122C-266(e) is amended by adding the following phrase immediately after the phrase "G.S. 122C-252": "or G.S. 122C-262".

Sec. 5. G.S. 15A-1003 is amended by deleting the phrase "or G.S. 122C-262".

Sec. 6. G.S. 15A-1321 is amended by deleting the phrase "or G.S. 122C-262".

Sec. 7. This act shall be effective October 1, 1987.

In the General Assembly read three times and ratified this the 10th day of July, 1987.

H.B. 261

CHAPTER 597

AN ACT REQUIRING APPROVAL FOR A SANITARY LANDFILL BY THE COUNTY OR CITY WHERE THE LANDFILL IS TO BE LOCATED BEFORE APPROVAL OF A PERMIT BY THE DEPARTMENT OF HUMAN RESOURCES CAN BE GIVEN.

The General Assembly of North Carolina enacts:

Section 1. G.S. 130A-294(a)(4) is amended by adding a sentence after the first sentence to read: "No permit shall be granted for a sanitary landfill, excluding demolition landfills as defined in the rules of the Commission for Health Services, without the Department receiving the prior approval for such permit from the county where it is to be located, except if it is to be located within the corporate limits or extraterritorial jurisdiction under Article 19 of Chapter 160A of the General Statutes, of a city as defined in G.S. 160A-1(2), from the city where it is to be located or whose jurisdiction it is in."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 10th day of July, 1987.

H.B. 397

CHAPTER 598

AN ACT TO PROVIDE THAT A DEFENDANT CONVICTED OF CHILD ABUSE PAY FOR REHABILITATIVE TREATMENT FOR THE VICTIM.

The General Assembly of North Carolina enacts:

Section 1. G.S. 15A-1343(b1) is amended by designating Subdivision (9) as Subdivision (10) and adding a new Subdivision (9) to read as follows:

"(9) If the offense is one in which there is evidence of physical, mental or sexual abuse of a minor, the court should encourage the minor and the minor's parents or custodians to participate in rehabilitative treatment and may order the defendant to pay the cost of such treatment."

Sec. 2. G.S. 7A-650(b1) is amended by inserting before the period at the end of the first sentence the words "and pay the costs thereof".

Sec. 3. G.S. 15A-1021(d) is amended by inserting after the first paragraph and before the second paragraph the following:

"If the offense is one in which there is evidence of physical, mental or sexual abuse of a minor, the court should encourage the minor and the minor's parents or custodians to participate in rehabilitative treatment and the plea agreement may include a provision that the defendant will be ordered to pay for such treatment."

Sec. 4. G.S. 148-57.1(c) is amended by adding a new paragraph to the end to read:

"If the offense is one in which there is evidence of physical, mental or sexual abuse of a minor, the court may order, as a condition of parole, that the defendant pay the cost of any rehabilitative treatment for the minor."

Sec. 5. G.S. 148-33.2(c) is amended by inserting immediately after the phrase "G.S. 15A-1343(d)." and before the next sentence a new sentence to read:

"If the offense is one in which there is evidence of physical, mental or sexual abuse of a minor, the court may order the defendant to pay from work release earnings the cost of rehabilitative treatment for the minor."

Sec. 6. This act shall become effective October 1, 1987. It shall apply to any person sentenced or any juvenile dispositional hearing held on or after that effective date.

In the General Assembly read three times and ratified this the 10th day of July, 1987.

H.B. 727

CHAPTER 599

AN ACT TO AMEND THE SOCIAL SERVICES APPEALS LAW.

The General Assembly of North Carolina enacts:

Section 1. G.S. 108A-79(c) is amended in the last paragraph by rewriting the second and third sentences to read:

"Failure to give timely notice of appeal constitutes a waiver of the right to a hearing except that, for good cause shown, the county department of social services may permit an appeal notwithstanding the waiver. The waiver shall not affect the right to reapply for benefits."

Sec. 2. G.S. 108A-79(g) is amended by rewriting the third sentence to read:

"Failure to give timely notice of further appeal constitutes a waiver of the right to a hearing before an official of the Department except that, for good cause shown, the Department may issue an order permitting a review of the local appeal hearing notwithstanding the

waiver. The waiver shall not affect the right to reapply for benefits."

Sec. 3. G.S. 108A-79(k) reads as rewritten:

"(k) Any appellant or county board of social services or board of county commissioners in the case of the food stamp program applicant or recipient who is dissatisfied with the final decision of the Department may file, within 30 days of the receipt of notice of such decision, a petition for judicial review in superior court of the county from which the case arose. Failure to file a petition within the time stated shall operate as a waiver of the right of such party to review, except that, for good cause shown, a judge of the superior court resident in the district or holding court in the county from which the case arose may issue an order permitting a review of the agency decision under this Chapter notwithstanding such waiver. The hearing shall be conducted according to the provisions of Article 4, Chapter 150A, Chapter 150B, of the North Carolina General Statutes. The court shall, on request, examine the evidence excluded at the hearing under G.S. 108A-79(e)(4) or G.S. 108A-79(i)(1) and if the evidence was improperly excluded, the court shall consider it. Notwithstanding the foregoing provisions, the court may take testimony and examine into the facts of the case, including excluded evidence, to determine whether the appellant is entitled to public assistance final decision is in error under federal and State law, and under the rules and regulations of the Social Services Commission or the Department of Human Resources. Furthermore, the court shall set the matter for hearing within 15 days from the filing of the record under G.S. 150A-47 G.S. 150B-47 and after reasonable written notice to the Department of Human Resources and the appellant applicant or recipient. Nothing in this subsection shall be construed to abrogate any rights that the county may have under Article 4 of Chapter 150B."

Sec. 4. This act shall become effective January 1, 1988.

In the General Assembly read three times and ratified this the 10th day of July, 1987.

H.B. 1057

CHAPTER 600

AN ACT TO REVISE ADMINISTRATIVE PENALTIES FOR VIOLATIONS BY NURSING HOMES AND DOMICILIARY CARE HOMES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 131E-126 and G.S. 131D-30 are repealed.

Sec. 2. Part B of Chapter 131E of the General Statutes is amended by adding a new section at the end to read:

" § 131E-129. *Penalties.*--(a) Violations classified. The Department shall impose an administrative penalty in accordance with provisions of this Part on any facility which is found to be in violation of the requirements of G.S. 131E-117 or applicable State and federal laws and regulations. Citations issued for violations shall be classified according to the nature of the violation as follows:

- (1) 'Type A Violation' means a violation by a facility of the regulations, standards, and requirements set forth in G.S. 131E-117, or applicable State or federal laws and regulations governing the licensure or certification of a facility which creates substantial risk that death or serious physical harm to a resident will occur or where such harm has occurred. Type A Violations shall be abated or eliminated immediately. The Department shall impose a civil penalty in an amount not less than two hundred fifty dollars (\$250.00) nor more than five thousand dollars (\$5,000) for each Type A Violation.
 - (2) 'Type B Violation' means a violation by a facility of the regulations, standards and requirements set forth in G.S. 131E-117 or applicable State or federal laws and regulations governing the licensure or certification of a facility which presents a direct relationship to the health, safety, or welfare of any resident, but which does not create substantial risk that death or serious physical harm will occur. The Department may impose a civil penalty in an amount up to five hundred dollars (\$500.00) for each Type B Violation. A citation for a Type B Violation which relates to the physical plant, systems, or equipment of the facility and which causes no harm to a resident of the facility shall provide 10 days to correct the violation. If such a Type B Violation, which is not a repeat violation as specified in (b)(3) of this section, is corrected within the 10 days, no civil penalty shall be imposed.
- (b) Penalties for failure to correct violations within time specified.
- (1) Where a facility has failed to correct a Type A Violation, the Department shall assess the facility a civil penalty in the amount of up to five hundred dollars (\$500.00) for each day that the deficiency continues. The Department or its authorized representative shall conduct an on-site inspection of the facility to insure that the violation has been corrected.
 - (2) Where a facility has failed to correct a Type B Violation within the time specified for correction by the Department,

the Department shall assess the facility a civil penalty in the amount of up to two hundred dollars (\$200.00) for each day that the deficiency continues beyond the date specified for correction without just reason for such failure. The Department or its authorized representative shall conduct an on-site inspection of the facility to insure that the violation has been corrected.

- (3) The Department shall impose a civil penalty which is treble the amount assessed under subdivision (1) or (2) of subsection (a) when a facility under the same management, ownership, or control:
 - a. has received a citation and paid a fine, or
 - b. has received a citation for which the Department in its discretion granted to it under subdivision (2) of subsection (a) but did not impose a penalty, for violating the same specific provision of a statute or regulation for which it has received a citation during the previous 12 months or within the time period of the previous licensure inspection, whichever time period is longer.

(c) Factors to be considered in determining amount of initial penalty. In determining the amount of the initial penalty to be imposed under this section, the Department shall consider the following factors:

- (1) The gravity of the violation, including the probability that death or serious physical harm to a resident will result or has resulted; the severity of the actual or potential harm, and the extent to which the provisions of the applicable statutes or regulations were violated;
- (2) The reasonable diligence exercised by the licensee and efforts to correct violations;
- (3) The number and type of previous violations committed by the licensee;
- (4) The amount of assessment necessary to insure immediate and continued compliance; and
- (5) The number of patients put at risk by the violation.

(d) The Department shall impose a civil penalty on any facility which refuses to allow an authorized representative of the Department to inspect the premises and records of the facility.

(e) Any facility wishing to contest a penalty shall be entitled to an administrative hearing as provided in the Administrative Procedure Act, Chapter 150B of the General Statutes. One issue at the

administrative hearing shall be the reasonableness of the amount of any civil penalty assessed by the Department. If a civil penalty is found to be unreasonable, the hearing officer may recommend that the penalty be modified accordingly.

(f) The Secretary may bring a civil action in the superior court of the county wherein the violation occurred to recover the amount of the administrative penalty whenever a facility:

- (1) Which has not requested an administrative hearing fails to pay the penalty within 60 days after being notified of the penalty; or
- (2) Which has requested an administrative hearing fails to pay the penalty within 60 days after receipt of a written copy of the decision as provided in G.S. 150B-36."

Sec. 3. Article 3 of Chapter 131D of the General Statutes is amended by adding a new section at the end to read:

"§ 131D-130. *Penalties; remedies.*--(a) Violations classified. The Department of Human Resources shall impose an administrative penalty in accordance with provisions of this Article on any facility which is found to be in violation of requirements of G.S. 131D-21 or applicable State and federal laws and regulations. Citations issued for violations shall be classified according to the nature of the violation as follows:

- (1) 'Type A Violation' means a violation by a facility of the regulations, standards, and requirements set forth in G.S. 131D-21 or applicable State or federal laws and regulations governing the licensure or certification of a facility which creates substantial risk that death or serious physical harm to a resident will occur or where such harm has occurred. Type A Violations shall be abated or eliminated immediately. The Department shall impose a civil penalty in an amount not less than two hundred fifty dollars (\$250.00) nor more than five thousand dollars (\$5000) for each Type A Violation.
- (2) 'Type B Violation' means a violation by a facility of the regulations, standards and requirements set forth in G.S. 131D-21 or applicable State or federal laws and regulations governing the licensure or certification of a facility which present a direct relationship to the health, safety, or welfare of any resident, but which does not create substantial risk that death or serious physical harm will occur. The Department may impose a civil penalty in an amount up to two hundred fifty dollars (\$250.00) for each Type B Violation. A citation for a Type B Violation which relates to the physical plant, systems, or equipment of the facility and which causes no harm to a resident of the facility shall

provide 10 days to correct the violation. If such a Type B Violation, that is not a repeat violation as specified in (b)(3) of this section, is corrected within the 10 days, no civil penalty shall be imposed.

(b) Penalties for failure to correct violations within time specified.

(1) Where a facility has failed to correct a Type A Violation, the Department shall assess the facility a civil penalty in the amount of up to five hundred dollars (\$500.00) for each day that the deficiency continues. The Department or its authorized representative shall conduct an on-site inspection of the facility to insure that the violation has been corrected.

(2) Where a facility has failed to correct a Type B Violation within the time specified for correction by the Department, the Department shall assess the facility a civil penalty in the amount of up to two hundred dollars (\$200.00) for each day that the deficiency continues beyond the date specified for correction without just reason for such failure. The Department or its authorized representative shall conduct an on-site inspection of the facility to insure that the violation has been corrected.

(3) The Department shall impose a civil penalty which is treble the amount assessed under subdivision (1) or (2) of subsection (a) when a facility under the same management, ownership, or control:

a. has received a citation and paid a fine, or

b. has received a citation for which the Department in the discretion granted to it under subdivision (2) of subsection (a) did not impose a penalty, for violating the same specific provision of a statute or regulation for which it received a citation during the previous six months or within the time period of the previous licensure inspection, whichever time period is longer.

(c) Factors to be considered in determining amount of initial penalty. In determining the amount of the initial penalty to be imposed under this section, the Department shall consider the following factors:

(1) The gravity of the violation, including the probability that death or serious physical harm to a resident will result or has resulted; the severity of the actual or potential harm, and the extent to which the provisions of the applicable

statutes or regulations were violated;

- (2) The reasonable diligence exercised by the licensee and efforts to correct violations;
- (3) The number and type of previous violations committed by the licensee;
- (4) The amount of assessment necessary to insure immediate and continued compliance; and
- (5) The number of patients put at risk by the violation.

(d) The Department shall impose a civil penalty on any facility which refuses to allow an authorized representative of the Department to inspect the premises and records of the facility.

(e) Any facility wishing to contest a penalty shall be entitled to an administrative hearing as provided in the Administrative Procedure Act, Chapter 150B of the General Statutes. One issue at the administrative hearing shall be the reasonableness of the amount of any civil penalty assessed by the Department. If a civil penalty is found to be unreasonable, the hearing officer may recommend that the penalty be modified accordingly.

(f) Notwithstanding the notice requirements of G.S. 131D-26(b), any penalty imposed by the Department of Human Resources under this section shall commence on the day the violation began.

(g) The Secretary may bring a civil action in the superior court of the county wherein the violation occurred to recover the amount of the administrative penalty whenever a facility:

- (1) Which has not requested an administrative hearing fails to pay the penalty within 60 days after being notified of the penalty, or
- (2) Which has requested an administrative hearing fails to pay the penalty within 60 days after receipt of a written copy of the decision as provided in G.S. 150B-36.

(h) The Secretary shall establish a penalty review committee within the Department."

Sec. 4. This act shall become effective October 1, 1987.

In the General Assembly read three times and ratified this the 10th day of July, 1987.

H.B. 198

CHAPTER 601

AN ACT TO INCORPORATE THE TOWN OF TAYLORTOWN,
AND PROVIDE FOR THE SIMULTANEOUS DISSOLUTION
OF THE TAYLORTOWN SANITARY DISTRICT.

The General Assembly of North Carolina enacts:

Section 1. In accordance with G.S. 130A-81(1a), the Town of Taylortown is incorporated and the Taylortown Sanitary District is simultaneously dissolved. Such incorporation and dissolution are not subject to referendum.

Sec. 2. A Charter for the Town of Taylortown is enacted to read:

"CHARTER OF THE TOWN OF TAYLORTOWN.

"Chapter I.

"Incorporation and Corporate Powers.

"Section 1.1. Incorporation and corporate powers. The inhabitants of the Town of Taylortown are a body corporate and politic under the name 'Town of Taylortown'. Under that name they have all the powers, duties, rights, privileges, and immunities conferred and imposed upon cities by the general law of North Carolina.

"Chapter II.

"Corporate Boundaries.

"Sec. 2.1. Town Boundaries. Until modified in accordance with law, the boundaries of the Town of Taylortown are as follows:

All the area included within the boundaries of all that tract or parcel of land in Mineral Springs Township, Moore County, North Carolina, particularly described as follows:

Tract 1

BEGINNING at a point in the center of a small branch due North of the end of Crocker Avenue, thence due South 530 feet, more or less, to the southern line of Crocker Avenue; thence following said southern line of Crocker Avenue North 83° 30' East 600 feet thence South 6° 30' East 340 feet, more or less, to the southern side of Pinehurst Street; thence following said southern side of Pinehurst Street and continuing to a corner in the Pinehurst, Inc. line North 76° East 1180 feet, more or less; thence across Pinehurst property North 10° 30' East 720 feet, more or less, to another corner in the Pinehurst line; thence following the Pinehurst, Inc. line North 19° East 300 feet, more or less, to a point in the Academy Heights Subdivision line; thence following the Academy Heights Subdivision line South 78° 25' East 160 feet and North 11° 35 minutes East 1200 feet to a point; thence across the undeveloped portion of the Academy Heights Subdivision North 16 degrees 45 minutes West 600 feet more or less, to the southeastern corner of the Bumacur Heights Subdivision; thence following the lines of said subdivision North 18° 30' West 950 feet; North 71° 30' East 220 feet and North 18° 30' West 1050 feet; thence North 48° West 800 feet, more or less, to Frye's southwest corner; thence following Frye's line North 37° 45' West 885 feet to his northwestern corner; thence North 85° 30' West 2800 feet, more or less, to a point in the center of a road (#1216) 900 feet along its centerline from the center of the Murdocksville-West

End Road; thence South 82° West 2150 feet; thence South 17° East 1950 feet, more or less to a point in the center of the Murdocksville-West End Road, 850 feet west of the intersection of the road to Robbins; thence South $33^{\circ} 30'$ East 2350 feet, more or less, to the center of a branch; thence following said branch downstream to Joe's Fork and thence upstream to a small branch North of Crocker Street and up said branch to the point of BEGINNING.

Tract 2

BEGINNING at a point in the existing Sanitary District, said point in the eastern line of Carl N. Bradshaw Property as recorded in Deed Book 126, Page 597 and 598, Moore County Registry; thence S $30^{\circ} 30'$ E. approximately 900 feet to a branch; thence downstream with said branch approximately 1700 feet to another branch; thence upstream with said branch approximately 800 feet to a point; thence west approximately 2100 feet to a point on Carl N. Bradshaw's line; thence North approximately 1120 feet to the beginning of the proposed additional Area I as shown on Map entitled Proposed Taylortown Corporate Limits by Central Carolina Surveyors, P.A., dated 6/6/86 and revised 10/31/86.

Tract 3

BEGINNING at the southeast corner of the existing Sanitary District; thence 200 feet to the southeast corner of existing well #3; thence S 10° E approximately 1300 feet to a point in the centerline of N.C. Hwy. 211; thence as said centerline in a northwesterly direction approximately 3580 feet to the centerline of a branch; thence with said branch in a northwesterly direction approximately 500 feet to another branch; thence with said branch easterly approximately 600 feet to a point; thence south approximately 530 feet to a point; thence N $83^{\circ} 30'$ E approximately 600 feet to a point at the north east corner of existing well #2; thence S $6^{\circ} 30'$ E approximately 340 feet to a point; thence N 76° E approximately 1180 feet to the beginning being the proposed Additional Area II as shown on Map entitled Proposed Taylortown Corporate Limits by Central Carolina Surveyors, P.A., dated 6/6/86 and revised 10/31/86.

"Sec. 2.2. If any of the territory described in Section 2.1 of this Charter is located within the corporate limits of another municipality, it is removed from that municipality, effective July 1, 1988, and placed in the corporate limits of the Town of Taylortown on that date, notwithstanding Section 2.1 of this Charter.

"Chapter III.**"Governing Body.**

"Sec. 3.1. Structure of governing body; number of members. The governing body of the Town of Taylortown is the Town Council, which has five members.

"Sec. 3.2. Manner of electing board. The qualified voters of the entire Town nominate and elect the members of the Council.

"Sec. 3.3. Term of office of Council members. Members of the Town Council are elected to two-year terms.

"Sec. 3.4. Selection of Mayor; term of office. At the organizational meeting of the Town Council following each election, the Town Council shall elect one of its members to serve as Mayor. The Mayor shall serve at the pleasure of the Town Council.

"Sec. 3.5. Filling of vacancies. Vacancies occurring for any reason in the Town Council shall be filled by the remaining members of the Council for the remainder of the unexpired term.

"Chapter IV.**"Elections.**

"Sec. 4.1. Conduct of Town elections. The Town Council shall be elected on a nonpartisan basis and the results determined by the plurality method as provided by G.S. 163-292.

"Chapter V.**"Administration.**

"Sec. 5.1. Mayor-Council plan. The Town of Taylortown operates under the Mayor-Council plan as provided by Part 3 of Article 7 of Chapter 160A of the General Statutes.

"Chapter VI.**"Extraterritorial Jurisdiction and Annexation.**

"Sec. 6.1. Extraterritorial jurisdiction. The Town may not exercise any extraterritorial jurisdiction or extraterritorial powers under Article 19 of Chapter 160A of the General Statutes."

Sec. 3. The incorporation of the Town of Taylortown and the simultaneous dissolution of the Taylortown Sanitary District shall become effective at 12:00 noon on July 15, 1987. The Taylortown Sanitary District shall take all actions necessary to effect this transfer of the assets and liabilities of the Sanitary District to the Town of Taylortown by July 14, 1987.

Sec. 4. Until members of the Town Council are elected in accordance with the Town Charter and the law of North Carolina, the five members of the current Board of the Taylortown Sanitary District shall serve as members of the Town Council. They shall elect a Mayor from among their members to serve until the organizational meeting after the 1987 municipal election. Notwithstanding G.S. 163-294.2, for the 1987 election, notices of candidacy shall be filed not

earlier than noon on July 15, 1987, and not later than noon on August 5, 1987.

Sec. 5. From and after July 14, 1987, the citizens and property in the Town of Taylortown shall be subject to municipal taxes levied for the year beginning July 15, 1987, and for that purpose the town shall obtain from Moore County a record of property in the area herein incorporated which was listed for taxes as of January 1, 1987, and the businesses in the town shall be liable for privilege license tax from the effective date of the privilege license tax ordinance. The Town may adopt a budget ordinance for fiscal year 1987-88 without following the timetable in the Local Government Budget and Fiscal Control Act.

Sec. 6. The transitional provisions of G.S. 130A-81(5) a. through g. shall apply to the Town of Taylortown and the Taylortown Sanitary District.

Sec. 7. Effective July 1, 1988, the Town of Taylortown is removed from the Pinehurst Fire Protection District and from the Eastwood Fire Protection District.

Sec. 8. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 13th day of July, 1987.

S.B. 22

CHAPTER 602

AN ACT TO REPEAL OBSOLETE LOCAL ACTS CONCERNING
PROPERTY TAXES.

The General Assembly of North Carolina enacts:

Section 1. Chapter 43 of the 1971 Session Laws is repealed.

Sec. 2. Chapter 557 of the 1973 Session Laws is repealed.

Sec. 3. Chapter 1110 of the 1979 Session Laws, Second Session 1980, is amended by rewriting G.S. 105-316.9(c) set forth in Section 1 of that act, to read:

"(c) This section applies only to Forsyth and Pasquotank Counties."

Sec. 4. Chapter 253 of the 1981 Session Laws is repealed.

Sec. 5. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 13th day of July, 1987.

S.B. 311

CHAPTER 603

AN ACT TO CLARIFY THE FAIR HOUSING ACT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 41A-5 is rewritten to read:

"§ 41A-5. *Proof of violation.*--(a) It is a violation of this Chapter if:

- (1) A person by his act or failure to act intends to discriminate against a person. A person intends to discriminate if, in committing an unlawful discriminatory housing practice described in G.S. 41A-4 he was motivated in full, or in any part at all, by race, color, religion, sex, national origin, or any other characteristic or classification protected by this Chapter. An intent to discriminate may be established by direct or circumstantial evidence; or
- (2) A person's act or failure to act has the effect, regardless of intent, of discriminating, as set forth in G.S. 41A-4, against a person of a particular race, color, religion, sex, national origin, or any other characteristic or classification protected by this Chapter. However, it is not a violation of this Chapter if a person whose action or inaction has an unintended discriminatory effect, proves that his action or inaction was motivated and justified by business necessity.

(b) It shall be no defense to a violation of this Chapter that the violation was requested, sought, or otherwise procured by another person."

Sec. 2. G.S. 41A-7(h)(2) is rewritten to read:

"(2) Commence a civil action in superior court, in its own name, or in its own name on behalf of the complainant. In such an action, the Council shall be represented by an attorney employed by the Council, and G.S. 114-2 shall not apply."

Sec. 3. G.S. 41A-7(j) is amended by adding the following sentences at the end of that subsection:

"If the action is brought by the Council on behalf of a complainant, the court may award actual and punitive damages to the complainant. The court may award punitive damages to a prevailing plaintiff or complainant only if it is shown that the defendant committed a violation of this Chapter with intent to discriminate."

Sec. 4. G.S. 41A-7 is amended by adding a new subsection at the end to read:

"(k) Parties to a civil action brought pursuant to this Chapter shall have the right to a jury trial as provided for by the North Carolina Rules of Civil Procedure.

Sec. 5. This act shall be effective October 1, 1987.

In the General Assembly read three times and ratified this the 13th day of July, 1987.

S.B. 473

CHAPTER 604

AN ACT TO AUTHORIZE UNION COUNTY TO ADOPT A UNIFIED LAND USE ORDINANCE, ALLOW THE BOARD OF ADJUSTMENT TO ACT BY MAJORITY VOTE, AUTHORIZE THE PLANNING BOARD TO ISSUE PERMITS, AND REQUIRE CHALLENGES TO ZONING AMENDMENTS TO BE BROUGHT WITHIN SIXTY DAYS.

The General Assembly of North Carolina enacts:

Section 1. Union County is authorized to adopt a unified land use or development ordinance which combines into one document zoning, subdivision, and other regulations authorized or referenced under Article 18 of Chapter 153A or Article 19 of Chapter 160A of the General Statutes. Such ordinance may treat subdivision preliminary plat applications in the same manner as other special or conditional use permits.

Sec. 2. The Union County Board of Commissioners may provide in any ordinance adopted under Article 18 of Chapter 153A of the General Statutes that:

(1) The Board of Adjustment may decide any matter before it upon a majority vote of the board membership or upon a majority vote of those present and not excused from voting, a quorum being present.

(2) Notwithstanding the provisions of G.S. 1-54.1, an action challenging an ordinance that changes the zoning classification of any property must be commenced within 60 days after the effective date of such ordinance.

(3) The Planning Board may consider and issue or deny permits for the use or subdivision of land under circumstances and in accordance with the conditions and requirements set forth in an ordinance adopted under Article 18 of Chapter 153A of the General Statutes, and notwithstanding the provisions of G.S. 153A-345, decisions by the Planning Board issuing or denying such permits shall be subject to review by the Superior Court in the same manner and subject to the same requirements as decisions of the Board of Adjustment.

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 13th day of July, 1987.

AN ACT TO MERGE ALL OF THE SCHOOL ADMINISTRATIVE
UNITS IN ROBESON COUNTY, SUBJECT TO A
REFERENDUM.

The General Assembly of North Carolina enacts:

Section 1. The existing Robeson County School Administrative Unit, the existing Fairmont City School Administrative Unit, the existing Lumberton City School Administrative Unit, the existing Red Springs City School Administrative Unit, and the existing St. Pauls City School Administrative Unit are merged effective July 1, 1989. The resulting consolidated county school administrative unit shall be known as the Public Schools of Robeson County.

Sec. 2. (a) There is established the Interim Board of Education for the Public Schools of Robeson County (the "Interim Board") to consist of 15 members appointed by the General Assembly in subsections (b) and (c) of this subsection.

(b) The following persons are appointed as members of the Interim Board in Class 1, with terms to expire June 30, 1990:

- (1) Seat 3 L. Gilbert Carroll;
- (2) Seat 4 Shirley Locklear;
- (3) Seat 6 Mary B. Carroll;
- (4) Seat 7 Millard Singletary;
- (5) Seat 9 McDuffie Cummings;
- (6) Seat 10 Burlester Campbell;
- (7) Seat 11 Aileen Holmes; and
- (8) Seat 12 Raymond Ammons.

(c) The following persons are appointed as members of the Interim Board in Class 2, with terms to expire June 30, 1992:

- (1) Seat 1 John Barker;
- (2) Seat 2 Angus Thompson;
- (3) Seat 5 Abner Harrington;
- (4) Seat 8 Dalton Brooks;
- (5) Seat 13 Pete Ivey;
- (6) Seat 14 David Green; and
- (7) Seat 15 Ray Lowery.

(d) John Barker shall be the chairman of the Interim Board and Dalton Brooks shall be the vice-chairman. In the event the office of chairman becomes vacant, the vice-chairman shall become chairman. In case of a vacancy in the office of vice-chairman, the Interim Board shall elect a vice-chairman from among its membership. David Green shall be secretary of the Interim Board, provided that when an interim superintendent takes office, the interim superintendent shall be secretary.

Sec. 3. The Interim Board shall take office April 1, 1988. The Interim Board shall immediately assume authority and responsibility for:

(1) Supervising, coordinating, acquiring, contracting for and constructing all new school buildings to be built within the boundaries of the existing five school units; and

(2) Making contracts, hiring personnel, and adopting policies and procedures for the 1989-90 and subsequent school years; and

(3) Preparing and submitting to the Robeson County Board of Commissioners all necessary budgets for school purposes beginning with that for the 1989-90 school year, as well as for its own operations prior to that school year. Otherwise, except as provided by Section 11.1 of this act, the existing Robeson County and Fairmont, Lumberton, Red Springs, and St. Pauls City Boards of Education shall continue to administer their respective school units until the merger.

Sec. 4. Upon merger, the existing Robeson County and Fairmont, Lumberton, Red Springs, and St. Pauls City Boards of Education and the Interim Board are abolished and replaced by the Board of Education for the Public Schools of Robeson County. The Board of Education for the Public Schools of Robeson County shall consist of the 15 members of the Interim Board as of the effective date of the merger, and shall have all the powers and responsibilities previously provided for the Robeson County, Fairmont City, Lumberton City, Red Springs City, St. Pauls City, and Interim Boards and provided by State law generally for county boards of education. From July 1, 1989, through June 30, 1992, the Board shall have 15 members. From and after July 1, 1992, the Board shall have 13 members.

Sec. 5. The eight members of the Board of Education for the Public Schools of Robeson County in Class 1 provided for in Section 2 of this act shall serve for terms to expire on June 30, 1990, at which time they shall be replaced by four members to be elected as provided by Section 5.1 of this act. The seven members of the Board of Education for the Public Schools of Robeson County in Class 2 provided for in Section 2 of this act shall serve for terms to expire on June 30, 1992, at which time they shall be replaced by five members to be elected as provided by Section 5.1 of this act.

Sec. 5.1. (a) Elections for the Board of Education for the Public Schools of Robeson County shall be held at the same time as the primary election for county officers as established by G.S. 163-1. The elections shall be conducted on a non-partisan basis, with the results determined by plurality in accordance with G.S. 163-292. Except as otherwise provided by this act, elections shall be held in accordance with the applicable provisions of Chapter 115C and Chapter 163 of the General Statutes.

(b) Robeson County is divided into electoral districts as set forth in subsection (c) of this section. Each candidate for an electoral district seat must reside in the district for which he is to be elected, and only the qualified voters of the district may vote for the election of that district seat.

(c) Districts:

- (1) District 1 consists of Lumberton Precincts 1, 2, 3, and 8, Census BNA9901p of Lumberton Township outside Lumberton City, and Enumeration District 433A of Lumberton Township (excepting that part within District 7).
- (2) District 2 consists of Lumberton Precinct 6, Enumeration District 434A of Lumberton Township (excepting that part within District 7), Back Swamp Township, Enumeration Districts 447 and 448 of Union Township, and Enumeration Districts 461A and 461B of Fairmont Township.
- (3) District 3 consists of Lumberton Precincts 4 and 5, Enumeration District 435A of Lumberton Township, Wisharts Township, Britts Township, and East Howellsville Township.
- (4) District 4 consists of the remainder of Fairmont Township not in District 2, Orrum Township, Smyrna Township, Sterling Township, Marietta Township, and Gaddy Township.
- (5) District 5 consists of Thompson Township, Rowland Township, Alfordsville Township, and Maxton Township.
- (6) District 6 consists of Pembroke Township and Enumeration District 449 of Union Township.
- (7) District 7 consists of Lumberton Precinct 7, the areas within Enumeration Districts 433A and 434A consisting of the right-of-way of North Carolina Highways 72/711 from the Raft Swamp Township Line to the Lumberton City Limits as of January 1, 1980, Raft Swamp Township, Burnt Swamp Township, Saddletree Township, Enumeration District 423 of Smiths Township, and Philadelphus Township.
- (8) District 8 consists of Enumeration District 422 of Smiths Township, Red Springs Township, Rennert Township, and Shannon Township.
- (9) District 9 consists of Lumber Bridge Township, Parkton Township, St. Pauls Township, and West Howellsville Township.

(d) As used in subsection (d), enumeration districts are as found in the 1980 Federal Census. If any area in a Lumberton Precinct is

in Enumeration Districts 433A, 434A, or 435 of Lumberton Township, then for the purpose of subsection (c) of this section that territory shall be in the district in which the enumeration district is located.

(e) In 1990 and quadrennially thereafter, members shall be elected from districts 3, 5, 7, and 8 for four-year terms. In 1992 and quadrennially thereafter, members shall be elected from districts 1, 2, 4, 6, and 9 for four-year terms.

Sec. 7.1. In 1990, the General Assembly shall appoint four members of the Board of Education for the Public Schools of Robeson County, two for four-year terms beginning July 1, 1990, and two for two-year terms beginning July 1, 1990. In 1992 and biennially thereafter, the General Assembly shall appoint two members of the Board of Education for the Public Schools of Robeson County for four-year terms.

Sec. 8. Vacancies on the Interim Board shall be filled by appointment of the Interim Board to serve until the General Assembly fills the vacancy.

Sec. 9. Vacancies on the Board of Education for the Public Schools of Robeson County shall be filled by the remaining members of the Board, except in the case of appointments made by the General Assembly under Section 7.1 of this act the appointee shall serve until the remainder of the unexpired term or until the General Assembly fills the vacancy, whichever occurs first. In the case of a district seat, the Board must appoint a resident of that district.

Sec. 10. At the time of merger, the title to all property of the existing Robeson County Board of Education, the existing Fairmont City Board of Education, the existing Lumberton City Board of Education, the existing Red Springs City Board of Education, and the existing St. Pauls City Board of Education vests in the Board of Education for the Public Schools of Robeson County established by Section 4. All claims and demands of every kind which the two boards may have at the time of merger shall pass and be transferred to the Board of Education for the Public Schools of Robeson County and that Board shall have the same authority to enforce those claims and demands as the existing Robeson County and Fairmont, Lumberton, Red Springs and St. Pauls City Boards would have had if they continued to exist. Any obligations and liabilities of the existing Robeson County and Fairmont, Lumberton, Red Springs and St. Pauls City Boards of Education shall become the obligations and liabilities of the Board of Education for the Public Schools of Robeson County at the time of merger, and those obligations and liabilities may be enforced against that Board to the same extent they might be enforced against the existing boards had they continued to exist.

Sec. 11. No supplemental school tax shall be levied or remain in effect in Robeson County after the effective date of the merger except on a countywide basis.

Sec. 11.1. During the period beginning March 8, 1988, and ending with the abolition of those boards on July 1, 1989, the Robeson County Board of Education, the Fairmont City Board of Education, the Lumberton City Board of Education, the Red Springs City Board of Education and the St. Pauls City Board of Education may not enter into any contract for a capital outlay item, or appropriate any money for such item, or grant or increase any local salary supplement, without the approval of the Interim Board.

Sec. 12. The Robeson County Board of Commissioners shall provide adequate funding for the operations of the Interim Board between April 1, 1988, and June 30, 1989.

Sec. 12.1. (a) The Interim Board of Education shall employ an interim superintendent of schools, to be paid from funds provided by the Robeson County Board of Commissioners, to serve as chief executive officer to the Interim Board, and to organize and plan for the operation of county school administrative unit to be known as the Public Schools of Robeson County.

(b) The interim superintendent shall be provided by the Robeson County Board of Commissioners with an office, secretary, and necessary expenses to operate that office.

Sec. 12.2. (a) State and county funds budgeted within the Public Schools of Robeson County by the Board of County Commissioners and the Board of Education for the Public Schools of Robeson County shall be allocated among the public schools without regard to which administrative unit that school had previously been located in, and without special preference to any school.

(b) The schedule for salary supplements shall be without regard to the school in which the teacher is teaching or which local school administrative unit the teacher taught.

(c) Notwithstanding subsection (a) of this section, if State funds are provided for personnel, and not enough funds are provided to have such personnel at all schools where the function can be provided, the assignment of such personnel by the county board of education shall be done on a fair and equitable basis.

Sec. 12.3. It is the intent of the General Assembly that student assignments made under this act shall be done with an effort to maximize the community school concept.

Sec. 13. The Robeson County Board of Commissioners shall provide local funding to the Public Schools of Robeson County for the following school years at at least the designated percentage of the

average local funding per ADM in the remainder of the State, in accordance with the most recent figures available from the State Board of Education as of January 1 of the year in which the budget is adopted:

| | |
|------------------------|------|
| 1989-90 | 70% |
| 1990-91 | 75% |
| 1991-92 and thereafter | 80%. |

Sec. 14. Sections 1 through 13 of this act shall become effective only if approved by the qualified voters of Robeson County in an election to be held on March 8, 1988. The question on the ballot shall be:

- ☐ FOR consolidation of the five school administrative units in Robeson County into the Public Schools of Robeson County.
- ☐ AGAINST consolidation of the five school administrative units in Robeson County into the Public Schools of Robeson County.

The election shall be conducted by the Robeson County Board of Elections in accordance with Chapter 163 of the General Statutes. If a majority of the qualified voters voting in the election vote in favor of the question, Sections 1 through 13 of this act shall become effective. Otherwise, they shall not become effective.

Sec. 15. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 13th day of July, 1987.

S.B. 622

CHAPTER 606

AN ACT PERTAINING TO THE MANNER OF QUALIFYING AREAS FOR ANNEXATION BY THE CITY OF DURHAM.

The General Assembly of North Carolina enacts:

Section 1. The Charter of the City of Durham, being Chapter 671, Session Laws of 1975, is further amended by adding a new section to read:

"*Sec. 2.2. Annexation of areas adjacent or contiguous to certain described territory in Durham County.* For the purpose of determining whether an area which the City proposes to annex qualifies for annexation pursuant to G.S. 160A-31, G.S. 160A-48, or G.S. 160A-58.1, the boundary of the territory described in Section 2 of Chapter 435, Session Laws of 1985, to the extent that said territory lies within Durham County, shall be considered a part of the municipal boundary of the City when, through annexation of intervening land, the boundary of said territory (described in Section 2 of Chapter 435,

Session Laws of 1985) coincides with the municipal boundary of the City for a distance of at least 5,300 feet."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 13th of July, 1987.

S.B. 783

CHAPTER 607

AN ACT TO REGULATE TITLING OF SALVAGE VEHICLES AND TO AMEND CHAPTER 20 "MOTOR VEHICLE LAWS OF NORTH CAROLINA".

The General Assembly of North Carolina enacts:

Section 1. Chapter 20 of the General Statutes is amended by adding a new Part to Article 3 to read:

"Part 3A.

"Salvage Titles.

"§ 20-71.2. *Declaration of purpose.*--The titling of salvage motor vehicles constitutes a problem in North Carolina because members of the public are sometimes misled into believing a motor vehicle has not been damaged by collision, fire, flood, accident, or other cause or that the vehicle has not been altered, rebuilt, or modified to such an extent that it impairs or changes the original components of the motor vehicle. It is therefore in the public interest that the Commissioner of Motor Vehicles issue rules to give public notice of the titling of such vehicles and to carry out the provisions of this Part of the motor vehicle laws of North Carolina.

"§ 20-71.3. *Titles and registration cards to be branded.*--Motor Vehicle certificates of title and registration cards issued pursuant to G.S. 20-57 shall be branded. As used herein "branded" means that the title and registration card shall contain a designation that discloses if the vehicle is classified as (a) Flood Vehicle, (b) Non-U.S.A. Vehicle, (c) Reconstructed Vehicle, (d) Salvage Motor Vehicle, or (e) Salvage Rebuilt Vehicle or other classification authorized by law. Any motor vehicle which has been branded in another state shall be branded with the nearest applicable brand specified in this section, except that no junk vehicle or vehicle that has been branded junk in another state shall be titled or registered. The Commissioner shall prepare necessary forms and may adopt regulations required to carry out the provisions of this Part 3A. The title shall reflect the branding until surrendered to or cancelled by the Commissioner.

"§ 20-71.4. *Failure to disclose damage to a vehicle shall be a misdemeanor.*--It shall be unlawful and constitute a misdemeanor for any person to fail to disclose to the transferee prior to transfer that the title and registration of the motor vehicle must be designated as branded or to make an application for or to obtain an unbranded title or registration to a motor vehicle when he knows, or reasonably should know, that a branded title or registration is required."

Sec. 2. G.S. 20-4.01(33) reads as rewritten:

~~"(33) Reconstructed Vehicles. -- Vehicles of a type required to be registered hereunder materially altered from their original construction by the removal, addition, or substitution of essential parts.~~

- (a) Flood Vehicle. A motor vehicle that has been submerged or partially submerged in water to the extent that damage to the body, engine, transmission, or differential has occurred.
- (b) Non-U.S.A. Vehicle. A motor vehicle manufactured outside of the United States and not intended by the manufacturer for sale in the United States.
- (c) Reconstructed Vehicle. A motor vehicle of a type required to be registered hereunder that has been materially altered from original construction due to removal, addition or substitution of new or used essential parts; and includes glider kits and custom assembled vehicles.
- (d) Salvage Motor Vehicle. Any motor vehicle damaged by collision or other occurrence to the extent that the cost of repairs to the vehicle and rendering the vehicle safe for use on the public streets and highways would exceed seventy-five percent (75%) of its fair retail market value, or a motor vehicle that has been declared a total loss by an insurer. Fair market retail values shall be as found in the NADA Pricing Guide Book or other publications approved by the Commissioner.
- (e) Salvage Rebuilt Vehicle. A salvage vehicle that has been rebuilt for title and registration.
- (f) Junk Vehicle. A motor vehicle which is incapable of operation or use upon the highways and has no resale value except as a source of parts or scrap, and shall not be titled or registered."

Sec. 3. This act shall become effective January 1, 1988.

In the General Assembly read three times and ratified this the 13th day of July, 1987.

AN ACT TO CLARIFY THE LAW THAT APPLIES TO THE
EXEMPTION OF FARM VEHICLES FROM THE MOTOR
VEHICLE REGISTRATION PROVISIONS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-51(5) reads as rewritten:

"(5) Farm tractors equipped with rubber tires and trailers or semitrailers when attached thereto and when used by a farmer, his tenant, agent, or employee in transporting his own farm implements, farm supplies, or farm products from place to place on the same farm, from one farm to another, from farm to market, or from market to farm. This exemption shall extend also to any tractor, implement of husbandry, and trailer or semitrailer while on any trip within a radius of 10 miles from the point of loading, provided that the vehicle does not exceed a speed of 35 miles per hour. This section shall not be construed as granting any exemption to farm tractors, implements of husbandry, and trailers or semitrailers which are operated on a for-hire basis, whether money or some other thing of value is paid or given for the use of such tractors, implements of husbandry, and trailers or semitrailers."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 13th day of July, 1987.

AN ACT TO AMEND AN ACT TO PROVIDE A SUPPLEMENTAL
RETIREMENT FUND FOR FIREMEN IN THE TOWN OF
TARBORO AND TO MODIFY THE APPLICATION OF G.S.
118-5, 118-6, AND 118-7 TO THE TOWN OF TARBORO.

The General Assembly of North Carolina enacts:

Section 1. Chapter 157 of the 1985 Session Laws is rewritten to read:

"Section 1. Supplemental Retirement Fund Created. The Board of Trustees of the Local Firemen's Relief Fund of the Town of Tarboro, as established in accordance with G.S. 118-6, hereinafter called the Board of Trustees, shall create and maintain a separate fund to be called the Tarboro Firemen's Supplemental Retirement Fund, hereinafter called the Supplemental Retirement Fund, and shall maintain books of account for the Fund, separate from the books of account of the Firemen's Local Relief Fund of the Town of Tarboro,

hereinafter called the Local Relief Fund. The Board of Trustees shall pay into the Supplemental Retirement Fund the funds prescribed by this act.

Sec. 2. Transfers of Funds and Disbursements. Notwithstanding the provisions of G.S. 118-7, the Board of Trustees of the Local Firemen's Relief Fund of Tarboro shall:

(1) prior to January 1, 1974, transfer to the Supplemental Retirement Fund all funds, including earnings on investments, of the Local Relief Fund in excess of twenty-five thousand dollars (\$25,000);

(2) at any time when the amount of funds in the Local Relief Fund shall, by reason of disbursements authorized by G.S. 118-7, be less than twenty-five thousand dollars (\$25,000), transfer from the Supplemental Retirement Fund to the Local Relief Fund an amount sufficient to maintain in the Local Relief Fund the sum of twenty-five thousand dollars (\$25,000);

(3) as soon as practicable after January 1 of each year, but in no event later than July 1, distribute the sum of the annual funds paid to the Local Relief Fund by authority of G.S. 118-5 the income earned in the preceding calendar year upon investments of funds belonging to the Local Relief Fund and the income earned in the preceding calendar year upon investments of funds belonging to the Supplemental Retirement Fund as Supplemental Retirement benefits in accordance with Section 3 of this act; provided, however, any funds not paid out as benefits as set forth in Section 3 of this act, shall become a part of the Supplemental Retirement Fund.

Sec. 3. Supplemental Retirement Benefits. (a) Each fireman, whether a volunteer, fully paid, or part paid, and each volunteer fireman who retired as a volunteer fireman, even if he thereafter accepts or continues employment as a fully paid fireman, who retired subsequent to January 1, 1970, with 20 years or more service and who has attained the age of 55, is entitled to and shall receive in each calendar year following the calendar year in which he retires an annual supplemental retirement benefit as hereinafter set forth. The total annual payments may not exceed ninety percent (90%) of the annual income of the Fund. The total amount to be distributed is at the discretion of the Board of Trustees. Individual payments may not exceed the yearly individual amount paid by the North Carolina State Firemen's Pension Fund. In the year of retirement or in the year of death after retirement, payment shall be prorated by the month. Credit for a whole month shall be given for service for at least 15 days of the last month of service. Firemen retiring prior to December 15 shall receive their pro rata payment at the next annual payment date.

(b) Any fireman retiring after December 15 will receive no benefits the following year. Full benefits shall be awarded following the first full year of retirement. Death benefits shall be awarded, prorated by the month for the year in which death occurs. Final payment shall be made during the calendar year following death.

(c) Any fireman who is not otherwise entitled to supplemental retirement benefits under subsection (a) of this section shall nevertheless be entitled to these benefits in any calendar year in which the Board of Trustees makes the following written findings of fact:

- (1) that he initially retired from his position as fireman because of his inability, by reason of sickness or injury, to perform the normal duties of an active fireman; and
- (2) that within 30 days prior to or following his initial retirement as a fireman, at least two physicians licensed to practice medicine in North Carolina, certified that he was at this time unable, by reason of sickness or injury, to perform the normal duties of an active fireman; and
- (3) that, at the time of his initial retirement as a fireman, there was not available to him in the fire department or any other department of the town a position of employment, the normal duties he was capable of performing.

(d) Any fireman who transfers into the Tarboro Fire Department may transfer his longevity to the fire department but shall remain active for a period of five years in the Tarboro Fire Department to become eligible to participate in the Tarboro Supplemental Retirement Fund. Time spent in the Tarboro Fire Department will be prorated, based upon his years of service with the Tarboro Fire Department, as follows:

- (1) after service for at least five years, twenty-five percent (25%);
- (2) after service for at least 10 years, fifty percent (50%);
- (3) after service for at least 15 years, seventy-five percent (75%); and
- (4) after service for at least 20 years, one hundred percent (100%).

(e) Any member transferred to the Tarboro Fire Department, who becomes disabled while performing his duties in the Tarboro Fire Department shall be entitled to full benefits regardless of his number of years of service.

(f) Any member transferred to the Tarboro Fire Department who becomes unable to perform his duties for reason of sickness or injury not in the line of duty, shall be entitled to benefits as listed in Section 3, subsection (d).

(g) If, for any reason, the fund is insufficient to pay in full any pension benefits, or other charges, then all benefits shall be reduced pro rata, for as long as the deficiency in amount exists. No claim shall accrue with respect to any amount by which a benefit payment has been reduced.

Sec. 4. Intention. It is the intention of Section 3 of this act to authorize the disbursement as supplemental retirement benefits only from the income derived in any calendar year from funds received pursuant to the provisions of Section 2, subsection (c). It is the intention of Section 2 of this act to require that the funds paid into the Supplemental Retirement Fund pursuant to subsections (a) and (c) shall be held in trust, and that no funds paid to the Supplemental Retirement Fund pursuant to subsections (a) and (c) thereof or as a gift, grant, bequest, or donation to such Fund may ever be disbursed except as and when required by Section 2(b).

Sec. 5. Investment of Funds. The Board of Trustees may invest any funds, either of the Local Relief Fund or of the Supplemental Retirement Fund, in any investment named in or authorized by G.S. 159-30, and only in the accordance with the provisions thereof, and shall invest all of the funds of the Supplemental Retirement Fund in one or more of these investments.

Sec. 6. Acceptance of Gifts. The Board of Trustees is hereby authorized to accept any gift, grant, bequest, or donation of money for the use of the Supplemental Retirement Fund.

Sec. 7. Bond of Treasurer. The Board of Trustees shall bond the Treasurer of the Local Relief Fund with a good and sufficient bond, in an amount at least equal to the amount of funds in his control, payable to the Board of Trustees and conditioned upon the faithful performance of his duties; this bond shall be in lieu of the bond required by G.S. 118-6. The Board of Trustees shall pay from the Local Relief Fund the premiums of the bond of the Treasurer.

Sec. 8. None of the provisions of this act shall create a liability for the Tarboro Firemen's Supplemental Retirement Fund unless sufficient current assets are available in the Fund to pay fully for the liability.

Sec. 9. If any provisions of this act are declared invalid by a court of competent jurisdiction, the invalidity shall not affect other provisions hereof which can be given effect without the invalid provision, and to this end the provisions of this act are declared to be

severable.

Sec. 10. All laws and clauses of laws in conflict with this act are hereby repealed."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 13th day of July, 1987.

H.B. 613

CHAPTER 610

AN ACT TO PERMIT THE CITY OF OXFORD AND THE TOWN OF CREEDMOOR TO COLLECT A MOTOR VEHICLE TAX OF NOT MORE THAN TEN DOLLARS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-97(a) reads as rewritten:

"(a) All taxes levied under the provisions of this Article are intended as compensatory taxes for the use and privileges of the public highways of this State, and shall be paid by the Commissioner to the State Treasurer, to be credited by him to the State Highway Fund; and no county or municipality shall levy any license or privilege tax upon any motor vehicle licensed by the State of North Carolina, except that cities and towns other than the City of Durham may levy not more than ~~five dollars (\$5.00)~~ ten dollars (\$10.00) per year upon any vehicle resident therein, and except that the City of Durham may levy not more than one dollar (\$1.00) per year upon any vehicle resident therein. Provided, further, that cities and towns may levy, in addition to the amounts hereinabove provided for, a sum not to exceed fifteen dollars (\$15.00) per year upon each vehicle operated in such city or town as a taxicab."

Sec. 2. This act applies to the City of Oxford and the Town of Creedmoor only.

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 13th day of July, 1987.

H.B. 628

CHAPTER 611

AN ACT TO AMEND G.S. 20-129.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-129(a) is rewritten to read:

"(a) When Vehicles Must Be Equipped. Every vehicle upon a highway within this State shall be equipped with lighted headlamps and rear lamps as required for different classes of vehicles, and subject to

exemption with reference to lights on parked vehicles as declared in G.S. 20-134:

- (1) during the period from sunset to sunrise,
- (2) when there is not sufficient light to render clearly discernible any person on the highway at a distance of 400 feet ahead, or
- (3) when the lack of visibility through the windshield requires the windshield wipers to be activated and the vehicle is within a school zone during the regular school hours of the school year."

Sec. 2. This act shall become effective October 1, 1987.

In the General Assembly read three times and ratified this the 13th day of July, 1987.

H.B. 812

CHAPTER 612

AN ACT TO AMEND CHAPTER 321 OF THE SESSION LAWS OF 1969 RELATING TO SUPPLEMENTAL RETIREMENT FUNDS FOR FIREMEN IN THE CITY OF BURLINGTON.

The General Assembly of North Carolina enacts:

Section 1. Chapter 321 of the Session Laws of 1969, as amended by Chapter 1144 of the Session Laws of 1979, is hereby amended by rewriting subsection (f) of Section 2 to read:

"(f) as soon as practicable after January 1 of each year, but in no event later than July 1, divide the income from the annual funds paid to the Local Relief Fund by authority of G.S. 118-5 and the income earned in the preceding calendar year upon investments of funds belonging to the Supplemental Retirement Fund and upon investments of funds belonging to the Local Relief Fund into equal shares and disburse the same as supplemental retirement benefits in accordance with Section 4 of this act;"

Sec. 2. Nothing in this act places a liability on the Fund unless there are sufficient current assets in the Fund to pay fully for the liability.

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 13th day of July, 1987.

S.B. 370

CHAPTER 613

AN ACT TO AMEND CERTAIN RULES OF CIVIL PROCEDURE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 1A-1, Rule 33(a) reads as rewritten:

"(a) Availability; procedures for use. Any party may serve upon any other party written interrogatories to be answered by the party served or, if the party served is a public or private corporation or a partnership or association or governmental agency, by any officer or agent, who shall furnish such information as is available to the party. Interrogatories may, without leave of court, be served upon the plaintiff after commencement of the action and upon any other party with or after service of the summons a complaint upon that party.

A party may direct no more than 50 interrogatories, in one or more sets, to any other party, except upon leave granted by the Court for good cause shown or by agreement of the other party. Interrogatory parts and subparts shall be counted as separate interrogatories for purposes of this rule.

There shall be sufficient space following each interrogatory in which the respondent may state the response. The respondent shall: (1) state the response in the space provided, using additional pages if necessary; or (2) restate the interrogatory to be followed by the response.

Each interrogatory shall be answered separately and fully in writing under oath, unless it is objected to, in which event the reasons for objection shall be stated in lieu of an answer. An objection to an interrogatory shall be made by stating the objection and the reason therefor either in the space following the interrogatory or following the restated interrogatory. The answers are to be signed by the person making them, and the objections signed by the attorney making them. The party upon whom the interrogatories have been served shall serve a copy of the answers, and objections if any, within 30 days after the service of the interrogatories, except that a defendant may serve answers or objections within 45 days after service of the summons and complaint upon the defendant. The court may allow a shorter or longer time. The party submitting the interrogatories may move for an order under Rule 37(a) with respect to any objection to or other failure to answer an interrogatory."

Sec. 2. G.S. 1A-1, Rule 34(b) reads as rewritten:

"(b) Procedure. The request may, without leave of court, be served upon the plaintiff after commencement of the action and upon any other party with or after service of the summons and complaint upon that party. The request shall set forth the items to be inspected either by individual item or by category, and describe each item and category

with reasonable particularity. The request shall specify a reasonable time, place, and manner of making the inspection and performing the related acts.

The party upon whom the request is served shall serve a written response within 30 days after the service of the request, except that a defendant may serve a response within 45 days after service of the summons and complaint upon that defendant. The court may allow a shorter or longer time. The response shall state, with respect to each item or category, that inspection and related activities will be permitted as requested, unless the request is objected to, in which event the reasons for objection shall be stated. If objection is made to part of an item or category, the part shall be specified. The party submitting the request may move for an order under Rule 37(a) with respect to any objection to or other failure to respond to the request or any part thereof, or any failure to permit inspection as requested.

There shall be sufficient space following each request in which the respondent may state the response. The respondent shall: (1) state the response in the space provided, using additional pages if necessary; or (2) restate the request to be followed by the response. An objection to a request shall be made by stating the objection and the reason therefor either in the space following the request or following the restated request."

Sec. 3. G.S. 1A-1, Rule 36(a) is amended by adding between the third and fourth paragraph a new paragraph to read as follows:

"There shall be sufficient space following each request in which the respondent may state the response. The respondent shall:

- (1) state the response in the space provided, using additional pages if necessary; or
- (2) restate the request to be followed by the response. An objection to a request shall be made by stating the objection and the reason therefor either in the space following the request or following the restated request."

Sec. 4. This act shall become effective October 1, 1987.

In the General Assembly read three times and ratified this the 14th day of July, 1987.

S.B. 525

CHAPTER 614

AN ACT TO PROVIDE A SUPPLEMENTAL RETIREMENT FUND FOR FIREMEN IN THE TOWN OF SELMA AND TO MODIFY THE APPLICATION OF G.S. 118-5, G.S. 118-6, AND G.S. 118-7 TO THE TOWN OF SELMA.

The General Assembly of North Carolina enacts:

Section 1. Supplemental Retirement Fund Created. The Board of Trustees of the Local Firemen's Relief Fund of the Town of Selma, as established in accordance with G.S. 118-6, hereinafter called the Board of Trustees, shall create and maintain a separate fund to be called the Selma Firemen's Supplemental Retirement Fund, hereinafter called the Supplemental Retirement Fund, and shall maintain books of account for such Fund separate from the books of account of the Firemen's Local relief Fund of the Town of Selma, hereinafter called the Local Relief Fund. The Board of Trustees shall pay into the Supplemental Retirement Fund the funds prescribed by this act.

Sec. 2. Transfers of Funds and Disbursements. Notwithstanding the provisions of G.S. 118-7, the Board of Trustees of the Local Firemen's Relief Fund of the Town of Selma shall:

(a) prior to January 31, 1988, and in each January thereafter, transfer to the Supplemental Retirement Fund all earnings on investments of the Local Relief Fund.

(b) as soon as practicable after January 1 of each year, but in no event later than July 1, divide funds belonging to the Supplemental Retirement Fund into equal shares and disburse the same as supplemental retirement benefits in accordance with Section 3 of this act.

Sec. 3. Supplemental Retirement Benefits. (a) Each retired fireman of the Town of Selma who has previously retired with 20 years service or more as a Town of Selma fireman, and who retired subsequent to attaining the age of 55 years, shall be entitled to and shall receive an annual supplemental retirement benefit equal to one share for each full year of service as a fireman of the Town of Selma provided, in no event shall any retired fireman be entitled to or receive in any year an annual benefit in excess of six hundred dollars (\$600.00).

(b) Any former firemen of the Town of Selma who are not otherwise entitled to supplemental retirement benefits under subsection (a) of this section, shall nevertheless be entitled to such benefits in any calendar year in which the Board of Trustees makes the following written findings of fact:

- (1) That he initially retired from his position as fireman because of his inability, by reason of sickness or injury, to perform the normal duties of an active fireman; and
- (2) That, within 30 days prior to or following his initial retirement as a fireman, at least two physicians licensed to practice medicine in North Carolina certified that he was at such time unable, by reason of sickness or injury, to perform the normal duties of an active fireman; and

- (3) That, since the preceding January 1, a physician licensed to practice medicine in North Carolina has certified that he remains unable, by reason of sickness or injury, to perform the normal duties of an active fireman; provided, that the Board of Trustees, after initially making the findings of fact specified in (1) and (2) of this subsection, need not specify such findings in subsequent calendar years.

Sec. 4. Intention. It is the intention of Sections 1, 2, and 3 of this act to authorize the disbursement as supplemental retirement benefits only of the funds belonging to the Supplemental Retirement Fund.

Sec. 5. Investment of funds. The Board of Trustees is hereby authorized and directed to invest all of the funds of the Local Firemen's Relief Fund in one or more of the investments named in or authorized by G.S 159-28.1.

Sec. 6. Bond of Treasurer. The Board of Trustees shall bond the Treasurer of the Local Firemen's Relief Fund with a good and sufficient bond, in an amount at least equal to the amount of funds in his control, payable to the Board of Trustees, and conditioned upon the faithful performance of his duties; such bond shall be in lieu of the bond required by G.S. 118-6. The Board of Trustees shall pay from the Local Firemen's Relief Fund the premiums on the bond of the Treasurer.

Sec. 7. City Authorized to Make Payment. The City Council of the Town of Selma is hereby authorized and may at its discretion make appropriations and disburse fund to the Supplemental Retirement Fund.

Sec. 8. Nothing in this act creates a liability on the Fund unless there are sufficient current assets in the Fund to pay fully for the liability.

Sec. 9. If any provision of this act shall be declared invalid by a court of competent jurisdiction, such invalidity shall not affect other provisions hereof which can be given effect without the invalid provision, and to this end the provisions of this act are declared to be severable.

Sec. 10. All laws and clauses of laws in conflict with this act are hereby repealed.

Sec. 11. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 14th day of July, 1987.

AN ACT TO CONFORM THE PENALTIES FOR LATE
PAYMENTS OF INHERITANCE TAX TO THOSE APPLICABLE
TO LATE PAYMENTS OF ALL OTHER TAXES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-16 is rewritten to read:

"§ 105-16. *Interest and penalty.*--All taxes imposed by this Article shall be due and payable at the death of the testator, intestate, grantor, donor or vendor; if not paid within nine months from date of death of the testator, intestate, grantor, donor or vendor, such tax shall bear interest at the rate established pursuant to G.S. 105-241.1(i), to be computed from the expiration of nine months from the date of the death of such testator, intestate, grantor, donor or vendor until paid: Provided, that if the taxes herein levied shall not be paid in full within nine months from the later of the date of death of the testator, intestate, grantor, donor or vendor, or from the qualification of the executor or administrator, then and in such case a penalty of ten per centum (10%) upon the amount of taxes remaining due and unpaid shall be added: Provided further, that the penalty of ten per centum (10%) herein imposed may be remitted by the Secretary of Revenue in case of unavoidable delay in settlement of estate or of pending litigation, and the Secretary of Revenue is further authorized, in case of protracted litigation or other delay in settlement not attributable to laches of the party liable for the tax, to remit all or any portion of the interest charges accruing under this schedule, with respect to so much of the estate as was involved in such litigation or other unavoidable cause of delay. Provided, that the time for payment and collection of such tax may be extended by the Secretary of Revenue for reasonable cause shown."

Sec. 2. This act shall become effective August 1, 1987, and shall apply to the estates of decedents dying on or after that date.

In the General Assembly read three times and ratified this the 14th day of July, 1987.

AN ACT TO PROHIBIT THE MISUSE OF CONFIDENTIAL
INFORMATION BY PUBLIC OFFICERS AND EMPLOYEES.

The General Assembly of North Carolina enacts:

Section 1. A new section is added to Article 31 of Chapter 14 of the General Statutes to read:

"§ 14-234.1. *Misuse of confidential information.*--(a) It is unlawful for any officer or employee of the State or an officer or an employee of any of its political subdivisions, in contemplation of official action by himself or by a governmental unit with which he is associated, or in reliance on information which was made known to him in his official capacity and which has not been made public, to commit any of the following acts:

- (1) acquire a pecuniary interest in any property, transaction, or enterprise or gain any pecuniary benefit which may be affected by such information or official action; or
 - (2) intentionally aid another to do any of the above acts.
- (b) Violation of this section is a misdemeanor."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 14th day of July, 1987.

H.B. 593

CHAPTER 617

AN ACT TO MORE CLOSELY CONFORM THE REQUIREMENTS FOR THE PURCHASE OF ADDITIONAL SERVICE CREDITS IN THE LOCAL GOVERNMENTAL EMPLOYEES' RETIREMENT SYSTEM WITH THE SAME REQUIREMENTS IN THE TEACHERS' AND STATE EMPLOYEES' RETIREMENT SYSTEM FOR MILITARY SERVICE, OUT-OF-STATE SERVICE, AND THE RESTORATION OF WITHDRAWN CONTRIBUTIONS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 128-26(a) is amended in the last paragraph by deleting the last sentence.

Sec. 2. G.S. 128-26(i) and G.S. 128-26(j) are amended by deleting the last sentence of each.

Sec. 3. Effective January 1, 1988, the last paragraph of G.S. 128-26(a) and of G.S. 128-26(j) are repealed.

Sec. 4. G.S. 128-26(a), G.S. 128-26(i) and G.S. 128-26(j) are each amended by deleting the phrase "10 years of membership service" or "10 years of current membership service" wherever they appear and substituting the phrase "10 years of prior and current membership service".

Sec. 5. The provisions of this act are effective July 1, 1987, unless otherwise stated. For the purposes of Section 3 of this act, members of the Retirement System who are members before January 1, 1988, shall retain all rights and privileges to purchase military and

out-of-state service credits under the same conditions that existed prior to the effective date of that section.

In the General Assembly read three times and ratified this the 14th day of July, 1987.

S.B. 330

CHAPTER 618

AN ACT TO AUTHORIZE GASTON COUNTY TO LEVY A ROOM OCCUPANCY TAX.

The General Assembly of North Carolina enacts:

Section 1. Occupancy tax. (a) Authorization and scope. The Gaston County Board of Commissioners may by resolution, after not less than 10 days' public notice and after a public hearing held pursuant thereto, levy a room occupancy tax of no more than three percent (3%) of the gross receipts derived from the rental of any room, lodging, or similar accommodation furnished by a hotel, motel, inn, or similar place within the county that is subject to sales tax imposed by the State under G.S. 105-164.4(3). This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations or to accommodations furnished by any hotel, motel, inn, or similar place that offers to rent fewer than twenty-seven rooms or units.

(b) Collection. Every operator of a business subject to the tax levied under this section shall, on and after the effective date of the levy of the tax, collect the tax. This tax shall be collected as part of the charge for furnishing a taxable accommodation. The tax shall be stated and charged separately from the sales records, and shall be paid by the purchaser to the operator of the business as trustee for and on account of the county. The tax shall be added to the sales price and shall be passed on to the purchaser instead of being borne by the operator of the business. The county shall design, print, and furnish to all appropriate businesses and persons in the county the necessary forms for filing returns and instructions to ensure the full collection of the tax. An operator of a business who collects the occupancy tax levied under this section may deduct from the amount remitted to the county a discount of three percent (3%) of the amount collected.

(c) Administration. The county shall administer a tax levied under this section. A tax levied under this section is due and payable to the county finance officer in monthly installments on or before the 15th day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall,

on or before the 15th day of each month, prepare and render a return on a form prescribed by the county. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied.

A return filed with the county finance officer under this section is not a public record as defined by G.S. 132-1 and may not be disclosed except as required by law.

(d) Penalties. A person, firm, corporation, or association who fails or refuses to file the return required by this section shall pay a penalty of ten dollars (\$10.00) for each day's omission. In case of failure or refusal to file the return or pay the tax for a period of 30 days after the time required for filing the return or for paying the tax, there shall be an additional tax, as a penalty, of five percent (5%) of the tax due in addition to any other penalty, with an additional tax of five percent (5%) for each additional month or fraction thereof until the tax is paid.

Any person who willfully attempts in any manner to evade a tax imposed under this section or who willfully fails to pay the tax or make and file a return shall, in addition to all other penalties provided by law, be guilty of a misdemeanor and shall be punishable by a fine not to exceed one thousand dollars (\$1,000), imprisonment not to exceed six months, or both. The Board of Commissioners may, for good cause shown, compromise or forgive the penalties imposed by this subsection.

(e) Use of tax revenue. Gaston County may use the proceeds of an occupancy tax levied under this section for any lawful purpose.

(f) Effective date of levy. A tax levied under this section shall become effective on the date specified in the resolution levying the tax. That date must be the first day of a calendar month, however, and may not be earlier than the first day of the second month after the date the resolution is adopted.

(g) Repeal. A tax levied under this section may be repealed by a resolution adopted by the Gaston County Board of Commissioners. Repeal of a tax levied under this section shall become effective on the first day of a month and may not become effective until the end of the fiscal year in which the repeal resolution was adopted. Repeal of a tax levied under this section does not affect a liability for a tax that was attached before the effective date of the repeal, nor does it affect a right to a refund of a tax that accrued before the effective date of the repeal.

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 15th day of July, 1987.

S.B. 421

CHAPTER 619

AN ACT TO PERMIT ALL CITIES TO PARTICIPATE IN DOWNTOWN DEVELOPMENT PROJECTS.

Whereas, the federal government, through its Urban Development Action Grant program, has encouraged cities to actively participate in downtown development projects with the private sector; and

Whereas, nationally, public-private cooperation on such projects has become recognized as an extremely valuable technique in revitalizing cities; and

Whereas, a number of cities have received authority under local acts to actively participate with the private sector in downtown development projects; and

Whereas, the experiences of those cities demonstrate the value of such cooperation and the need for the authority to be extended to all cities; Now, therefore,

The General Assembly of North Carolina enacts:

Section 1. Chapter 160A of the General Statutes is amended by adding a new section to read:

" § 160A-458.3. *Downtown development projects.*--(a) In this section, 'downtown development project' means a capital project in the city's central business district, as that district is defined by the city council, comprising one or more buildings and including both public and private facilities. By way of illustration but not limitation, such a project might include a single building comprising a publicly owned parking structure and publicly owned convention center and a privately owned hotel or office building.

(b) If the city council finds that it is likely to have a significant effect on the revitalization of the central business district, the city may acquire, construct, own, and operate or participate in the acquisition, construction, ownership, and operation of a downtown development project or of specific facilities within such a project. The city may enter into binding contracts with one or more private developers with respect to acquiring, constructing, owning, or operating such a project. Such a contract may, among other provisions, specify the following:

- (1) the property interests of both the city and the developer or developers in the project, provided that the property interests of the city shall be limited to facilities for a public purpose;

- (2) the responsibilities of the city and the developer or developers for construction of the project;
- (3) the responsibilities of the city and the developer or developers with respect to financing the project.

Such a contract may be entered into before the acquisition of any real property necessary to the project.

(c) A downtown development project may be constructed on property acquired by the developer or developers, on property directly acquired by the city, or on property acquired by the city while exercising the powers, duties, and responsibilities of a redevelopment commission pursuant to G.S. 160A-505 or G.S. 160A-456.

(d) In connection with a downtown development project, the city may convey interests in property owned by it, including air rights over public facilities, as follows:

- (1) If the property was acquired while the city was exercising the powers, duties, and responsibilities of a redevelopment commission, the city may convey property interests pursuant to the 'Urban Redevelopment Law' or any local modification thereof.
- (2) If the property was acquired by the city directly, the city may convey property interests pursuant to G.S. 160A-457, and Article 12 of Chapter 160A of the General Statutes does not apply to such dispositions.
- (3) In lieu of conveying the fee interest in air rights, the city may convey a leasehold interest for a period not to exceed 99 years, using the procedures of subparagraphs (1) or (2) of this subsection, as applicable.

(e) The contract between the city and the developer or developers may provide that the developer or developers shall be responsible for construction of the entire downtown development project. If so, the contract shall include such provisions as the city council deems sufficient to assure that the public facility or facilities included in the project meet the needs of the city and are constructed at a reasonable price. A project constructed pursuant to this paragraph is not subject to Article 8 of Chapter 143 of the General Statutes, provided that city funds constitute no more than fifty percent (50%) of the total costs of the downtown development project. Federal funds available for loan to private developers in connection with a downtown development project shall not be considered city funds for purposes of this subsection.

(f) Operation. The city may contract for the operation of any public facility or facilities included in a downtown redevelopment project by a person, partnership, firm or corporation, public or private. Such a contract shall include provisions sufficient to assure that any such facility or facilities are operated for the benefit of the

citizens of the city.

(g) Grant funds. To assist in the financing of its share of a downtown development project, the city may apply for, accept and expend grant funds from the federal or State governments."

Sec. 2. This act shall not apply to the municipalities located in Buncombe County.

Sec. 3. This act is effective upon ratification but shall not affect pending litigation.

In the General Assembly read three times and ratified this the 15th day of July, 1987.

S.B. 506

CHAPTER 620

AN ACT TO MAKE VARIOUS CHANGES IN THE LAW
RELATING TO REGISTERS OF DEEDS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 45-37(a)(2)e. is amended by adding immediately after the word "institution," the phrase "or savings and loan association,".

Sec. 2. G.S. 45-37.2 is amended by adding at the end a new sentence to read:

"The fee for recording a notice of satisfaction shall be the fee for recording instruments in general provided in G.S. 161-10(a)(1)."

Sec. 3. G.S. 47-3 and G.S. 47-7 are repealed.

Sec. 4. G.S. 161-3 is amended by deleting the phrase "the board of county commissioners" and substituting "a person authorized to administer oaths as defined in G.S. 11-7.1".

Sec. 5. G.S. 161-21 is amended by deleting the phrase ", and the register shall afterwards keep up such index without any additional compensation".

Sec. 6. This act is effective upon ratification. Any oath of office taken by a register of deeds before a person authorized to administer oaths as defined in G.S. 11-7.1 and not before the board of county commissioners is hereby validated.

In the General Assembly read three times and ratified this the 15th day of July, 1987.

H.B. 209

CHAPTER 621

AN ACT TO AUTHORIZE CITIES TO DESIGNATE HISTORIC
DISTRICTS AS MUNICIPAL SERVICE DISTRICTS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 160A-536 is amended by adding a new subdivision to read:

"(1a) Any service, facility, or function which the municipality may by law provide in the city, and including but not limited to placement of utility wiring underground, placement of period street lighting, placement of specially designed street signs and street furniture, landscaping, specialized street and sidewalk paving, and other appropriate improvements to the rights-of-way that generally preserve the character of an historic district; provided that this subdivision only applies to a service district which, at the time of its creation, had the same boundaries as an historic district created under Part 3A of Article 19 of this Chapter;"

Sec. 2. G.S. 160A-538 is amended by adding a new subsection to read:

"(f) A service district which at the time of its creation had the same boundaries as an historic district created under Part 3A of Article 19 of this Chapter may only have its boundaries extended to include territory which has been added to the historic district."

Sec. 3. G.S. 160A-538.1 is amended by adding a new subsection to read:

"(c) A service district which at the time of its creation had the same boundaries as an historic district created under Part 3A of Article 19 of this Chapter may only have its boundaries reduced to exclude territory which has been removed from the historic district."

Sec. 4. This act shall apply only to those cities having a population in excess of 150,000 which are located in counties having two or more cities each of which has a population in excess of 60,000. This act shall also apply to those cities where, at the time of creation of the district, the city had a population of not less than 20,000 nor more than 25,000, was not a county seat, and was located in two counties one of which had eight incorporated municipalities. This act shall also apply to those cities where, at the time of creation of the district, the city is located in a county with a population of more than 100,000, which county has an area of less than 250 square miles.

Sec. 4.1. If any provision of this act is held unenforceable by any court of competent jurisdiction, the provisions of this act are declared to be severable, and such holding shall not affect the remainder of this act.

Sec. 5. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 15th day of July, 1987.

H.B. 1155

CHAPTER 622

AN ACT TO CREATE THE PUBLIC SCHOOL BUILDING CAPITAL FUND TO ASSIST COUNTY GOVERNMENTS IN MEETING THEIR PUBLIC SCHOOL BUILDING CAPITAL NEEDS, TO CREATE THE CRITICAL SCHOOL FACILITY NEEDS FUND TO PROVIDE FUNDS FOR COUNTIES THAT HAVE THE GREATEST CRITICAL SCHOOL FACILITY NEEDS, TO CREATE A COMMISSION TO DETERMINE THE CRITICAL SCHOOL FACILITY NEEDS OF EACH COUNTY, TO REPEAL THE TAX ON INVENTORIES OF MANUFACTURERS, RETAILERS, AND WHOLESALERS, TO REIMBURSE LOCAL GOVERNMENTS FOR THE RESULTING REVENUE LOSS, TO INCREASE THE CORPORATE INCOME TAX, TO REQUIRE MOST EMPLOYERS TO REMIT WITHHOLDING TAXES ON A MONTHLY BASIS, TO REPEAL THE RETAILERS' DISCOUNT FOR PAYMENT OF SALES AND USE TAXES WHEN DUE, AND TO EARMARK ADDITIONAL LOCAL SALES AND USE TAX PROCEEDS FOR PUBLIC SCHOOL CONSTRUCTION.

The General Assembly of North Carolina enacts:

Section 1. This act shall be known as the "School Facilities Finance Act of 1987".

Sec. 2. G.S. 105-275 is amended by adding two new subdivisions to read:

"(32) Inventories owned by manufacturers.

(33) Inventories owned by retail and wholesale merchants."

Sec. 3. G.S. 105-163.03 and G.S. 105-163.06 are repealed.

Sec. 4. G.S. 105-163.02 is amended by deleting subdivisions (1) through (7) and subdivisions (9) and (10) of that section.

Sec. 5. G.S. 105-277(i) is repealed.

Sec. 6. Effective January 1, 1989, G.S. 105-277A is rewritten to read:

"§ 105-277A. *Reimbursement for exclusion of retailers' and wholesalers' inventories.*--(a) The Secretary of Revenue shall reimburse taxing units for the property tax exclusion provided for retailers' and wholesalers' inventories as provided in this section. On or before January 15, 1989, the governing body of each county and city shall furnish to the Secretary a list of all the inventories owned by retailers and wholesalers that were taxed in 1987 by the county or city under this Subchapter. The list shall contain the value of the inventories taxed as well as the property tax rates in effect in the county or city

for the eight years from 1980 through 1987. The list shall also contain the property tax rates in effect for those years in each special district or unit of government for which the county or city collected taxes in 1987 but whose tax rates were not included in the rates listed for the county or city, and the value of the inventories taxed in that district or unit. The list shall be accompanied by an affidavit attesting to the accuracy of the list and shall be on a form prescribed by the Secretary.

The Secretary shall calculate an average rate for each county and city, and for each special district or unit of government whose tax rates were not included in the tax rates of a county or city, as the arithmetic mean of the property tax rates in effect in the county, city, district, or unit for eight years from 1980 through 1987.

Within 60 days after receiving a certified list as required by this subsection, the Secretary shall pay to each county its per capita share of the sum of thirteen million two hundred thirty thousand dollars (\$13,230,000) plus an amount equal to the greater of the following:

(1) The county's per capita share of the sum of thirty-nine million dollars (\$39,000,000); or

(2) The total of the county average rate multiplied by eighty percent (80%) of the value of the inventories owned by retailers and wholesalers that were taxed in 1987 by the county, plus the city average rate for each city in the county multiplied by eighty percent (80%) of the value of the inventories that were taxed in 1987 by the city plus the average rate for each special district or unit of government for which the county or a city in the county collected taxes in 1987, but whose tax rates were not included in the county or city's rates, multiplied by eighty percent (80%) of the value of the inventories owned by retailers and wholesalers that were taxed in 1987 in the district or unit, minus two and one-half percent (2.5%) of the total distribution received by the county under G.S. 105-472, 105-486, 105-493, 105-501, and Chapter 1096 of the 1967 Session Laws between September 1, 1987, and June 30, 1988, plus or minus the percentage of this sum that equals the percentage by which State personal income has increased or decreased during the most recent 12-month period for which State personal income data has been compiled by the Bureau of Economic Analysis of the United States Department of Commerce.

Each year thereafter, as soon as practicable after January 1, the Secretary of Revenue shall distribute to each county the amount it received the previous year.

In making the per capita calculations under this subsection, the Secretary shall use the most recent annual population estimates certified by the State Budget Officer.

Amounts allocated to a county under this section shall in turn be divided and distributed between the county and the taxing units located in the county in proportion to the total amount of ad valorem taxes levied by each during the fiscal year preceding the distribution. For the purpose of computing the distribution for any year with respect to which the property valuation of a public service company is the subject of an appeal and the Department of Revenue is restrained by law from certifying the valuation to the appropriate counties and cities, the Department shall use the latest property valuation of that public service company that has been certified.

The governing body of each county and city shall report to the Secretary of Revenue such information as he may request in order to make the distribution under this section. If a county or city fails to make a requested report within the time prescribed, the Secretary may disregard that county or city and the other taxing units in the county or city in making the distribution.

(b) As used in this section, the term 'taxing unit' means a unit that levied a property tax or for which another unit collected a property tax for the fiscal year beginning July 1 of the year preceding the date a distribution is made under this section.

(c) The Secretary of Revenue shall pay for the distribution required by this section and the cost of making the distribution as follows:

- (1) For the distribution made in 1989, the Secretary shall draw an amount equal to the amount distributed and the cost of making the distribution first from the Inventory Tax Reimbursement Fund created in Section 15.1 of the School Facilities Finance Act of 1987, until it is exhausted, and then the remainder of that amount from collections received by the Department under Division I of Article 4 of this Chapter.
- (2) For distributions made in subsequent years, the Secretary shall charge the collections received by the Department under Division I of Article 4 of this Chapter with an amount equal to the amount distributed and the cost of making the distribution."

Sec. 7. Effective January 1, 1989, Article 12 of Chapter 105 of the General Statutes is amended by inserting a new section to read:

"§ 105-275.1. *Reimbursement for exclusion of manufacturers' inventories.*--(a) Initial Distribution. On or before January 15, 1989, the governing body of each county and each city shall furnish to the

Secretary a list of all the inventories owned by manufacturers that were taxed in 1987 by the county or city under this Subchapter. The list shall contain the value of the inventories taxed as well as the property tax rates in effect in the county or city for the eight years from 1980 through 1987. The list shall also contain the property tax rates in effect for those years in each special district or unit of government for which the county or city collected taxes in 1987 but whose tax rates were not included in the rates listed for the county or city, and the value of the inventories taxed in that district or unit. The list shall be accompanied by an affidavit attesting to the accuracy of the list and shall be on a form prescribed by the Secretary.

Within 60 days after receiving a certified list as required by this subsection, the Secretary shall pay to each county and city an amount equal to the county or city average rate, as provided below, multiplied by the value of the inventories owned by manufacturers that were taxed in 1987 by the county or city, plus or minus the percentage of this product that equals the percentage by which State personal income has increased or decreased during the most recent 12-month period for which State personal income data has been compiled by the Bureau of Economic Analysis of the United States Department of Commerce.

Within 60 days after receiving a certified list as required by this subsection, the Secretary shall also pay to each county and city an amount equal to the average rate, as provided below, for each special district or unit of government for which the county or city collected taxes in 1987, but whose tax rates were not included in the county or city's rates, multiplied by the value of the inventories owned by manufacturers that were taxed in 1987 in the district or unit.

The Secretary shall calculate an average rate for each county and city, and for each special district or unit of government whose tax rates were not included in the tax rates of a county or city, as the arithmetic mean of the property tax rates in effect in the county, city, district, or unit for the eight years from 1980 through 1987.

Of the funds received by each county and city pursuant to this subsection, the portion that was received because the county or city was collecting taxes for another special district or unit of government (either because the district or unit's tax rate was included in the city or county's rate or because the Secretary paid the county or city the product of the district or unit's average rate and the value of the inventories in the district or unit) shall be distributed among the districts and units in the county or city in accordance with regulations issued by the Local Government Commission. This distribution shall

be made as soon as practicable after the city or county receives funds under this subsection.

(b) Subsequent Distributions. Thereafter, as soon as practicable after January 1 of each year, the Secretary shall distribute to each county and city the amount it received under this section the preceding year. As soon as practicable after receiving funds under this subsection, every county and city shall distribute among the special districts and units of government for which the county or city collects tax an amount equal to the amount it distributed among such districts and units the previous year. This distribution shall be in accordance with regulations issued by the Local Government Commission.

(c) Use. Funds received by a county, city, special district, or other unit of government under this section may be used for any lawful purpose.

(d) 'City' Defined. As used in this section, the term 'city' has the same meaning as in G.S. 153A-1(l).

(e) Source of Funds. To pay for the distribution required by this section and the cost to the Department of Revenue of making the distribution, the Secretary of Revenue shall charge the collections received by the Department under Division I of Article 4 of Chapter 105 with an amount equal to the amount distributed and the cost of making the distribution."

Sec. 8. G.S. 105-130.3 reads as rewritten:

"§ 105-130.3. *Corporations.*--Every corporation doing business in this State shall pay annually an income tax equivalent to ~~six percent (6%)~~ seven percent (7%) of its net income or the portion thereof allocated and apportioned to this State.

The net income or net loss of such corporation shall be the same as 'taxable income' as defined in the Code subject to the adjustments provided in G.S. 105-130.5.

If the entire business of the corporation is done within this State or if the corporation is not taxable in another state within the meaning of subsection (b) of G.S. 105-130.4, the tax shall be measured by the entire net income of the corporation for the income year.

If the business of the corporation is taxable both within and without this State, its entire net income or net loss shall be allocated and apportioned in accordance with the provisions of G.S. 105-130.4."

Sec. 9. G.S. 105-163.6(c1) reads as rewritten:

"(c1) Notwithstanding any of the other provisions of this section, every employer required to deduct and withhold under the provisions of G.S. 105-163.2 an average of ~~three thousand dollars (\$3,000)~~ five

hundred dollars (\$500.00) or more per month during the preceding calendar year (or during so much of such year as he paid wages) and every employer who begins paying wages during a calendar year and whose liability to deduct and withhold under G.S. 105-163.2 can reasonably be expected to average ~~three thousand dollars (\$3,000)~~ five hundred dollars (\$500.00) or more per month in that calendar year, shall make returns and pay over to the Secretary each month the amounts required to be withheld under G.S. 105-163.2. Returns and payments to the Secretary by such employers shall be made on or before the fifteenth day of the month following the month for which such amounts were required to be withheld from the wages of employees; except that the returns and payments for the month of December shall be made on or before the 31st day of the following month.

When an employer has become subject to the requirements of this subsection, he shall continue to make returns and payments to the Secretary on that basis. However, an employer required under the provisions of this subsection to file monthly returns who, in a later calendar year, is required to deduct and withhold under G.S. 105-163.2 an average of less than ~~three thousand dollars (\$3,000)~~ five hundred dollars (\$500.00) per month may make application to the Secretary for authority to use the quarterly basis for filing and making payments. Such authority, when granted, shall be in writing, shall commence on a date set by the Secretary, and shall continue until the Secretary, in the exercise of his discretion, shall revoke it in writing, effective on a date set by him."

Sec. 10. G.S. 105-164.21 is repealed.

Sec. 11. G.S. 105-502(a) reads as rewritten:

" § 105-502. *Use of additional tax revenue by counties.*--(a) ~~Except as provided by subsection (b) of this section, revenue received by a county under this Article shall be subject to the following restrictions:~~

~~(1) Sixty percent (60%) of the revenues received by the county during the first two fiscal years in which the tax is in effect;~~

~~(2) Fifty percent (50%) of the revenues received by the county during the next two fiscal years;~~

~~(3) Forty percent (40%) of the revenues received by the county during the next four fiscal years;~~

~~(4) Thirty percent (30%) of the revenues received by the county during the next two fiscal years; and~~

~~(5) Twenty percent (20%) of the revenues received by the county during the next fiscal year.~~

Sixty percent (60%) of the revenue received by a county under this Article during the first 11 fiscal years in which the tax is in effect may be used by the county only for public school capital outlay purposes or to retire any indebtedness incurred by the county for these purposes during the period beginning five years prior to the date the taxes took effect."

Sec. 12. Chapter 115C of the General Statutes is amended by adding a new Article to Subchapter IX to read:

"Article 38A.

"Public School Building Capital Fund.

"§ 115C-546.1. *Creation of Fund; administration.*--(a) There is created the Public School Building Capital Fund. The Fund shall be used to assist county governments in meeting their public school building capital needs.

(b) Beginning September 1, 1987, and each month thereafter through June 30, 1988, the Secretary of Revenue shall deposit with the State Treasurer in the Public School Building Capital Fund one-seventh (1/7) of the corporate income tax net collections received during the previous month by the Department of Revenue under Division I of Article 4 of Chapter 105 of the General Statutes. Beginning July 1, 1988, the Secretary of Revenue shall, on a quarterly basis, deposit with the State Treasurer in the Public School Building Capital Fund an amount equal to two million five hundred thousand dollars (\$2,500,000) less than one-fourteenth (1/14) of the corporate income tax net collections received during the previous quarter by the Department of Revenue under Division I of Article 4 of Chapter 105 of the General Statutes. All funds deposited in the Public School Building Capital Fund shall be invested as provided in G.S. 147-69.2 and G.S. 147-69.3.

(c) The Fund shall be administered by the Office of State Budget and Management.

"§ 115C-546.2. *Allocations from the Fund; uses; expenditures; reversion to General Fund; matching requirements.*--(a) Monies in the Fund shall be allocated to the counties on a per average daily membership basis according to the average daily membership for the budget year as determined and certified by the State Board of Education. Interest earned on funds allocated to each county shall be allocated to that county.

(b) Monies in the Fund shall be used for the construction, reconstruction, enlargement, improvement, repair, or renovation of public school buildings and for the purchase of land for public school buildings. As used in this section, 'public school buildings' only includes facilities for individual schools that are used for instructional

and related purposes and does not include centralized administration, maintenance, or other facilities.

In the event a county finds that it does not need all or part of the funds allocated to it for the construction, reconstruction, enlargement, improvement, repair, or renovation of public school buildings or for the purchase of land for public school buildings, the unneeded funds allocated to that county may be used to retire any indebtedness incurred by the county for public school facilities.

(c) Monies in the Fund shall be matched on the basis of one dollar of local funds for every three dollars of State funds. Revenue received from local sales and use taxes that is restricted for public school capital outlay purposes pursuant to G.S. 105-502, 105-494, or 105-487 may be used to meet the local matching requirement."

Sec. 13. Chapter 115C of the General Statutes is amended by adding a new Article to read:

"Article 34A.

"Critical School Facility Needs Fund.

"§ 115C-489.1. *Creation of fund; administration.*--(a) There is created the Critical School Facility Needs Fund.

(b) On or before January 15, 1988, the Secretary of Revenue shall estimate the amount of additional tax revenue that will be collected during the twelve months ending June 30, 1988, as a result of Section 9 of the School Facilities Finance Act of 1987. The Secretary shall, prior to February 1, 1988, deposit with the State Treasurer in the Critical School Facility Needs Fund, an amount equal to that estimate. These funds shall be drawn from individual income tax net collections received by the Department of Revenue under Division II of Article 4 of Chapter 105 of the General Statutes.

The Secretary of Revenue shall, on or before February 1, 1988, deposit with the State Treasurer in the Critical School Facility Needs Fund the sum of forty million dollars (\$40,000,000). These funds shall be drawn from sales and use tax net collections received by the Department of Revenue under Article 5 of Chapter 105 of the General Statutes.

Effective July 1, 1988, the Secretary of Revenue shall, on a quarterly basis, deposit with the State Treasurer in the Critical School Facility Needs Fund the sum of two million five hundred thousand dollars (\$2,500,000). These funds shall be drawn from the corporate income tax collections received by the Department of Revenue under Division I of Article 4 of Chapter 105 of the General Statutes.

All funds deposited in the Critical School Facility Needs Fund shall be invested as provided in G.S. 147-69.2 and G.S. 147-69.3.

(c) The Fund shall be administered by the State Board of Education. Monies in the Fund shall be used only for the purposes specified in this Article.

" § 115C-489.2. *Grants from the fund.*--(a) The board of education and the boards of county commissioners of the county in which the local school administrative unit is located in whole or in part shall apply jointly for a grant from the Fund to meet a particular critical need in the local school administrative unit. Grants may be made only for projects that meet the statewide school facility minimum standards adopted by the State Board of Education pursuant to G.S. 115C-489.3.

The application shall contain information on how the critical need for which funds are requested would be met and how much State money is required for the project. The application shall also include an analysis of the school facility needs of the county and a long-range plan for meeting those needs.

At the request of a board of county commissioners or a local board of education, the State Board of Education shall provide technical assistance in facility planning to a local school administrative unit and a county preparing an application for a grant from the Fund.

(b) The Commission on School Facility Needs shall make grants from the Fund to the counties which it determines, according to the following criteria, have the greatest critical school facility needs in relation to resources available to pay for school facility needs:

- (1) The critical school facility needs in the county, as determined by the Commission on School Facility Needs pursuant to G.S. 115C-489.4. (Until the Commission issues a final report on critical school facility needs in the counties, the Commission shall use the preliminary report.)
- (2) Ability to pay as measured by:
 - a. the per pupil adjusted property tax base in the county. The per pupil adjusted property tax base in the county is the property tax base in the county adjusted using the sales tax assessment ratio study performed by the Department of Revenue, and
 - b. the per capita income of the county.
- (3) Any critical nonschool needs that may force the county to divert its resources from school facilities.

" § 115C-489.3. *Statewide school facility minimum standards.*--(a) Prior to October 1, 1987, the State Board of Education shall develop and adopt interim statewide school facility minimum standards. These

interim standards shall be used by the Commission on School Facility Needs to make its preliminary report on critical school facility needs in each county.

(b) Prior to June 1, 1988, the State Board of Education shall adopt statewide school facility minimum standards to define what constitutes adequate facilities, furniture, equipment, apparatus, and spaces. The State Board of Education shall provide a process for justifying deviations from the adopted standards. The State Board of Education shall report quarterly to the Joint Legislative Commission on Governmental Operations, until the standards are adopted, as to the Board's progress in developing standards. These standards shall be used by the Commission on School Facility Needs to make its final report on critical school facility needs in each county.

"§ 115C-489.4. *Commission on School Facility Needs.*--(a) There is created the Commission on School Facility Needs. The Commission shall be located administratively in the Department of Public Education but shall exercise all its prescribed statutory powers independently of the State Board of Education and the Department of Public Instruction.

The Commission shall consist of five members appointed by the General Assembly upon the recommendation of the President of the Senate in accordance with G.S. 120-121, one of whom shall serve as cochairman, and five members appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121, one of whom shall serve as cochairman.

Members of the Commission who are not State officers or employees shall receive per diem and necessary travel and subsistence expenses in accordance with G.S. 138-5. Members who are State officers or employees shall be reimbursed for travel and subsistence in accordance with G.S. 138-6.

The Department of Public Instruction shall provide requested professional and clerical staff to the Commission. The Commission may also employ professional and clerical staff and may hire outside consultants to assist it in its work.

(b)

- (1) Prior to April 1, 1988, the Commission on School Facility Needs shall make a preliminary report to the State Board of Education and the General Assembly on the amount of critical school facility needs in each county. The Commission shall use the interim statewide school facility minimum standards adopted by the State Board of Education pursuant to G.S. 115C-489.3(a) in determining the amount of critical needs in each county.

- (2) Prior to March 1, 1989, the Commission on School Facility Needs shall make a final report to the State Board of Education and the General Assembly on the total amount of school facility needs in each county. This report shall include a determination of which needs are critical. The Commission shall use the statewide school facility minimum standards adopted by the State Board of Education pursuant to G.S. 115C-489.3(b) in determining the amount of needs and critical needs in each county.

(c) The State Board of Education shall allocate the sum of two hundred thousand dollars (\$200,000) from the Critical School Facility Needs Fund to the Commission on School Facility Needs for the work of the Commission."

Sec. 14. G.S. 115C-521(a) reads as rewritten:

"(a) It shall be the duty of local boards of education to provide classroom facilities adequate to meet the requirements of G.S. 115C-47(10) and 115C-301. Local boards of education shall submit their long-range plans for meeting school facility needs to the State Board of Education by January 1, 1988, and every five years thereafter."

Sec. 15. G.S. 120-123 is amended by adding a new subdivision to read:

"(51) The Commission on School Facility Needs, established by G.S. 115C-489.3."

Sec. 15.1. There is created in the Department of Revenue the Inventory Tax Reimbursement Fund to partially fund the 1989 reimbursement to taxing units under G.S. 105-277A. Notwithstanding any other provision of law, for distributions of local sales and use taxes made on or after August 1, 1987, and before June 30, 1988, pursuant to G.S. 105-472, 105-486, 105-493, 105-501, and Chapter 1096 of the 1967 Session Laws, the Secretary of Revenue shall withhold from each county's share to be distributed an amount equal to three and three-tenths percent (3.3%) of that county's share. The amounts withheld shall be deposited in the Inventory Tax Reimbursement Fund to be distributed in accordance with G.S. 105-277A.

Sec. 16. This act does not affect the rights or liabilities of the State, a taxpayer, or other person arising under a statute amended or repealed by this act before its amendment or repeal; nor does it affect the right to any refund or credit of a tax that would otherwise have been available under the amended or repealed statute before its amendment or repeal.

Sec. 17. Sections 2, 3, 4, and 5 of this act are effective for taxable years beginning on or after January 1, 1988. Sections 6 and 7 of this act shall become effective January 1, 1989. Section 8 of this

act is effective for taxable years beginning on or after January 1, 1987. Section 9 of this act shall become effective August 1, 1987, and applies to amounts withheld from an employee's wages on or after that date. Section 10 of this act shall become effective August 1, 1987, and applies to remittances of sales and use taxes collected on or after that date. The remainder of this act is effective upon ratification.

In the General Assembly read three times and ratified this the 16th day of July, 1987.

S.B. 96

CHAPTER 623

AN ACT TO MAKE THE EVIDENCE OF THE USAGE OF SEAT BELTS INADMISSIBLE IN CRIMINAL OR CIVIL PROCEEDINGS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-135.2A(d) is rewritten to read:

"(d) Evidence of failure to wear a seat belt shall not be admissible in any criminal or civil trial, action, or proceeding except in an action based on a violation of this section."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 16th day of July, 1987.

S.B. 679

CHAPTER 624

AN ACT TO CHANGE THE TIMING PROVISION FOR ENTRY OF APPEAL WHEN A MOTION FOR APPROPRIATE RELIEF HAS BEEN FILED.

The General Assembly of North Carolina enacts:

Section 1. G.S. 15A-1448(a)(4) is repealed.

Sec. 2. This act shall become effective October 1, 1987.

In the General Assembly read three times and ratified this the 16th day of July, 1987.

H.B. 271

CHAPTER 625

AN ACT TO PERMIT TITLE INSURANCE COMPANIES TO INSURE THE PROPER PERFORMANCE OF REAL ESTATE CLOSING SERVICES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 58-132(a) is rewritten to read:

"(a) Companies may be formed in the manner provided in this Article for the purpose of furnishing information in relation to titles to real estate and of insuring owners and others interested therein against loss by reason of encumbrances and defective title; provided, however, that no such information shall be so furnished nor shall such insurance be so issued as to North Carolina real property unless and until the title insurance company has obtained the opinion of an attorney, licensed to practice law in North Carolina and not an employee or agent of the company, who has conducted or caused to be conducted under the attorney's direct supervision a reasonable examination of the title. The company shall cause to be made a determination of insurability of title in accordance with sound underwriting practices for title insurance companies. A company may also insure the proper performance of services necessary to conduct a real estate closing performed by an approved attorney licensed to practice in North Carolina. Provided, however, nothing in this section shall be construed to prohibit or preclude a title insurance company from insuring proper performance by its issuing agents."

Sec. 2. G.S. 58-132 is amended by adding a new subsection to read:

"(d) The premium rates charged for insuring against loss by reason of encumbrances and defective title and for insuring real estate closing services shall be based on the purchase price of the real estate being conveyed or the loan amount and shall not be established as flat fees. If a title insurer has also issued title insurance protecting a lender or owner against loss by reason of encumbrances and defective title, the insurer shall charge one undivided premium for the combination of the title insurance and the closing services insurance."

Sec. 3. G.S. 58-132 is amended in the catch line by inserting the following immediately after "formation": " ; insuring closing services; premium rates; combined premiums for lenders' coverages".

Sec. 4. G.S. 58-134 is amended by rewriting the first two sentences to read:

"Title insurance companies are subject to G.S. 58-21 and 58-22. The Commissioner may require title insurance companies to separately report their experience in insuring titles and in insuring closing services."

Sec. 5. G.S. 58-134 is amended by rewriting the catch line to read: "Financial statements and licenses required."

Sec. 6. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 16th day of July, 1987.

S.B. 101

CHAPTER 626

AN ACT TO AMEND THE BUSINESS CORPORATION ACT TO PERMIT CORPORATIONS TO LIMIT OR ELIMINATE THE LIABILITY OF DIRECTORS FOR MONETARY DAMAGES FOR CERTAIN BREACHES OF DUTY.

The General Assembly of North Carolina enacts:

Section 1. G.S. 55-7 is amended by adding a new subdivision to read as follows:

"(11) Any provision limiting or eliminating the personal liability of each director arising out of an action whether by or in the right of the corporation or otherwise for monetary damages for breach of his duty as a director. No such provision shall be effective with respect to (i) acts or omissions not made in good faith that the director at the time of such breach knew or believed were in conflict with the best interests of the corporation, (ii) any liability under G.S. 55-32, (iii) any transaction from which the director derived an improper personal benefit, or (iv) acts or omissions occurring prior to the date the provision became effective. As used herein, the term 'improper personal benefit' does not include a director's compensation or other incidental benefit for or on account of his service as a director, officer, employee, independent contractor, attorney, or consultant of the corporation. A charter or bylaw provision or contract or resolution indemnifying or agreeing to indemnify a director against personal liability under G.S. 55-19(a) shall be fully effective whether or not there is a provision in the articles of incorporation limiting or eliminating personal liability."

Sec. 2. This act is effective October 1, 1987.

In the General Assembly read three times and ratified this the 22nd day of July, 1987.

H.B. 1030

CHAPTER 627

AN ACT TO CLARIFY THE AUTHORITY OF SHERIFFS TO SERVE ORDERS OF POSSESSION IN JUDICIAL SALE, EXECUTION SALE AND FORECLOSURE SALE PROCEEDINGS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 1-339.29 is amended by adding at the end the following new subsection (d) to read:

"(d) An order for possession granted pursuant to the preceding subsection shall be directed to the sheriff, shall authorize him to remove the party or parties in possession, and their personal property, from the premises and to put the purchaser in possession, and shall be executed in accordance with the procedure for executing a writ or order for possession in a summary ejectment proceeding under G.S. 42-36.2."

Sec. 2. G.S. 1-339.68 is amended by adding at the end the following new subsection (d) to read:

"(d) An order for possession issued pursuant to the preceding subsection shall be directed to the sheriff, shall authorize him to remove the party or parties in possession, and their personal property, from the premises and to put the purchaser in possession, and shall be executed in accordance with the procedure for executing a writ or order for possession in a summary ejectment proceeding under G.S. 42-36.2."

Sec. 3. G.S. 45-21.29 is amended by adding at the end the following new subsection (l) to read:

"(l) An order for possession issued pursuant to G.S. 45-21.29(k) shall be directed to the sheriff, shall authorize him to remove the party or parties in possession, and their personal property, from the premises and to put the purchaser in possession, and shall be executed in accordance with the procedure for executing a writ or order for possession in a summary ejectment proceeding under G.S. 42-36.2."

Sec. 4. This act is effective upon ratification and applies to all orders of possession granted or issued after its effective date.

Let the General Assembly read three times and ratified this the 16th day of July, 1987.

H.B. 1138

CHAPTER 628

AN ACT TO AMEND THE LAW REGARDING SMALL CLAIMS ACTIONS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 7A-220 is rewritten to read:

"§ 7A-220. *No required pleadings other than complaint.*--There are no required pleadings in assigned small claim actions other than the complaint. Answers and counterclaims may be filed by the defendant in accordance with G.S. 7A-218 and G.S. 7A-219. Any new matter pleaded in avoidance in the answer is deemed denied or avoided. On appeal from the judgment of the magistrate for trial *de novo* before a district judge, the judge shall allow appropriate counterclaims, cross

claims, third party claims, replies, and answers to cross claims, in accordance with G.S. 1A-1, *et seq.*"

Sec. 2. This act shall become effective October 1, 1987, and applies to all actions filed on and after that date.

In the General Assembly read three times and ratified this the 16th day of July, 1987.

H.B. 503

CHAPTER 629

AN ACT TO PROVIDE FOR A SINGLE LICENSE SYSTEM FOR INSURANCE AGENTS, BROKERS, AND ADJUSTERS.

The General Assembly of North Carolina enacts:

Section 1. Chapter 58 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 45.

"Licensing of Agents, Brokers, Limited Representatives, and Adjusters.

"§ 58-610. *Scope.*--This Article governs the qualifications and procedures for the licensing of agents, brokers, limited representatives, adjusters, and motor vehicle damage appraisers. This Article applies to any and all kinds of insurance and insurers under Chapters 57, 57B, and this Chapter of the General Statutes. Except as provided in G.S. 58-634, this Article does not apply to the licensing of surplus lines licensees under Article 36 of this Chapter. For purposes of this Article, all references to insurance include annuities, unless the context otherwise requires.

"§ 58-611. *Definitions.*--As used in this Article, the following definitions apply:

(a) 'Agent' means a person licensed to solicit applications for, or to negotiate a policy of, insurance. A person not duly licensed who solicits or negotiates a policy of insurance on behalf of an insurer is an agent within the intent of this Article, and thereby becomes liable for all the duties, requirements, liabilities and penalties to which an agent of such company is subject, and such company by compensating such person through any of its officers, agents or employees for soliciting policies of insurance shall thereby accept and acknowledge such person as its agent in such transaction.

(b) 'Adjuster' means any individual who, for salary, fee, commission, or other compensation of any nature, as an independent contractor, as an employee of an independent contractor, as an employee of an insurer, or as an adjuster for any insured, investigates or reports to his principal relative to claims arising under insurance

contracts other than life or annuity. An attorney at law who adjusts insurance losses from time to time incidental to the practice of his profession or an adjuster of marine losses is not deemed to be an adjuster for purposes of this Article. An individual may not simultaneously hold an agent's and an adjuster's license in this State.

(c) 'Broker' means a person who, being a licensed agent, procures insurance for a party other than himself through a duly authorized agent of an insurer that is licensed to do business in this State but for which the broker is not authorized to act as agent. A person not duly licensed who procures insurance for a party other than himself is a broker within the intent of this Article, and thereby becomes liable for all the duties, requirements, liabilities and penalties to which such licensed brokers are subject.

(d) 'Limited representative' means a person who is authorized by the Commissioner to solicit or negotiate contracts for the particular kinds of insurance identified in G.S. 58-614(d) and which kinds of insurance are restricted in the scope of coverage afforded.

(e) 'Motor vehicle damage appraiser' means an individual who, for salary, fee, commission, or other compensation of any nature, as an independent contractor or as an employee of an independent contractor, regularly investigates or advises relative to the nature and amount of damage to motor vehicles located in this State or the amount of money deemed necessary to effect repairs thereto and who is not:

- (1) An adjuster licensed to adjust insurance claims in this State;
- (2) An agent for an insurance company who is not required by law to be licensed as an adjuster;
- (3) An attorney at law who is not required by law to be licensed as an adjuster; or
- (4) An individual who, incident to his regular employment in the business of repairing defective or damaged motor vehicles, investigates and advises relative to the nature and amount of motor vehicle damage or the amount of money deemed necessary to effect repairs thereto.

"§ 58-612. *Restricted license for overseas military agents.*-- Notwithstanding any other provision of this Article, an individual may be licensed by the Commissioner as a foreign military sales agent to represent a life insurance company domiciled in this State, provided the agent represents the insurance company only in a foreign country or territory and either on a United States military installation or with United States military personnel. The Commissioner may, upon request of the insurance company on application forms furnished by

the Commissioner and upon payment of the fee specified in G.S. 58-634, issue to the applicant a restricted license which will be valid only for the representation of the insurance company in a foreign country or territory and either on a United States military installation or with United States military personnel. The insurance company shall certify to the Commissioner that the applicant has the necessary training to hold himself out as a life insurance agent, and that the insurance company is willing to be bound by the acts of the applicant within the scope of his employment. A restricted license issued under this section shall be renewed annually as provided in G.S. 58-614(m).

" § 58-613. *Representation.*--(a) Every agent or limited representative who solicits or negotiates an application for insurance of any kind, in any controversy between the insured or his beneficiary and the insurer, is regarded as representing the insurer and not the insured or his beneficiary. This provision does not affect the apparent authority of an agent.

(b) Every broker who solicits an application for insurance of any kind, in any controversy between the insured or his beneficiary and the insurer issuing any policy upon such application, is regarded as representing the insured or his beneficiary and not the insurer; except any insurer that directly or through its agents delivers in this State to any insurance broker a policy of insurance pursuant to the application or request of such broker, acting for an insured other than himself, is deemed to have authorized such broker to receive on its behalf payment of any premium that is due on such policy of insurance at the time of its issuance or delivery.

" § 58-614. *General license requirements.*--(a) No person shall act as or hold himself out to be an agent, broker, limited representative, adjuster, or motor vehicle damage appraiser unless duly licensed.

(b) No agent, broker, or limited representative shall make application for, procure, negotiate for or place for others, any policies for any kinds of insurance as to which he is not then qualified and duly licensed.

(c) An agent or broker may be licensed for the following kinds of insurance:

- (1) Life, Accident and Health Insurance
- (2) Accident and Health Insurance
- (3) Fire and Casualty Insurance
- (4) Hospital Service
- (5) Title Insurance
- (6) Dental Service
- (7) Automobile Physical Damage

Any person who holds a valid license on February 1, 1988, which grants authority to act as an agent for the kinds of insurance described in this subsection shall be issued the equivalent agents' license for such kinds of insurance.

(d) A fire and casualty insurance license shall not authorize an agent or broker to sell accident and health insurance. An agent or broker must hold a life, accident and health insurance license or an accident and health insurance license to sell accident and health insurance.

(e) A limited representative may receive qualification for one or more licenses without examination for the following kinds of insurance:

- (1) Variable Contracts
- (2) Ocean Marine
- (3) Credit Life, Accident and Health
- (4) Credit
- (5) Travel Accident and Baggage
- (6) Motor Club

(f) No licensed agent, broker or limited representative shall solicit anywhere in the boundaries of this State, or receive or transmit an application or premium of insurance, for a company not authorized to do business in the State, except as provided in Article 36 of this Chapter.

(g) No agent shall place a policy of insurance with any insurer unless he has a current appointment as agent for the insurer, in accordance with G.S. 58-617.

(h) A partnership or corporation that negotiates or solicits insurance may be licensed as an agent, broker, or limited representative provided that it maintains a place of business in this State. Every member of the partnership and every officer, director, stockholder, and employee of the corporation personally engaged in this State in soliciting or negotiating policies of insurance shall be registered with the Commissioner and each such member, officer, director, stockholder or employee shall also qualify as an individual licensee. The partnership or corporate licensee shall within 30 days notify the Commissioner of any addition to or deletion from the list of registered individuals.

(i) The Commissioner shall not grant, renew, or continue any license if he finds that the license is being or will be used by the licensee or applicant for the purpose of writing controlled business. Controlled business means:

- (1) Insurance written on the interests of the licensee or of his immediate family or of his employer; or

- (2) Insurance covering himself; members of his immediate family; a corporation or partnership of which he or a member of his immediate family is an officer, director, substantial stockholder, partner, or employee; or the officers, directors, substantial stockholders, partners or employees of such a corporation or partnership; provided, however, that nothing in this subsection applies to insurance written in connection with credit transactions.
- (3) Such a license shall be deemed to have been, or intended to be, used for the purpose of writing controlled business, if the Commissioner finds that during any 12-month period the aggregate commissions earned from such controlled business have exceeded fifty percent (50%) of the aggregate commissions earned on all business written by such applicant or licensee during the same period.

(j) No insurer, agent, broker, or limited representative shall pay, directly or indirectly, any commission, brokerage or other valuable consideration to any person for services as an agent, broker, or limited representative within this State, unless such person at the time such services were performed held a valid license for that kind of insurance and appropriate company appointments as required by this Article for such services.

(k) Only agents who are duly licensed with appropriate company appointments, licensed brokers, or licensed limited representatives may accept, directly or indirectly, any commission, brokerage, or other valuable consideration: Provided, however, any individual duly appointed and licensed under this Article may pay his commissions or assign his commissions, or direct that his commissions be paid, to a partnership of which he is a member, employee, or agent, or to a corporation of which he is an officer, employee, or agent; provided further that this section does not prevent payment or receipt of renewal or other deferred commissions to or by any person entitled thereto under this section.

(l) The license shall state the name and Social Security or other identifying number of the licensee, date of issue, kind or kinds of insurance covered by the license, and such other information as the Commissioner deems to be proper.

(m) A license issued to an agent authorizes him to act until his license is otherwise suspended or revoked. Upon the suspension or revocation of a license, the licensee or any person having possession of such license shall return it to the Commissioner. An agent's license automatically terminates after a period of one year during which no appointment of such agent was in effect.

(n) A license of a broker, limited representative, adjuster, or motor vehicle damage appraiser shall be renewed on April 1st of each year and renewal fees shall be paid. The Commissioner is not required to print licenses for the purpose of renewing licenses. The Commissioner is authorized to establish for such licenses 'staggered' license renewal dates that will apportion renewals throughout each calendar year. If such a system of staggered licensing is adopted, the Commissioner is authorized to extend the licensure period for some licensees. License renewal fees prescribed by G.S. 58-634 shall be prorated to the extent they are commensurate with such extensions.

(o) No license as an agent, broker, or limited representative is required of the following:

- (1) Any regular salaried officer or employee of an insurance company, of a licensed agent, of a broker, or of a limited representative, if such officer's or employee's duties and responsibilities do not include the negotiation or solicitation of insurance.
- (2) Persons who secure and furnish information on behalf of an employer, where no commission is paid for such service, for the purpose of group or wholesale life insurance, annuities, or group, blanket or franchise health insurance; or for enrolling individuals under such plans or issuing certificates thereunder; or otherwise assisting in administering such plans.
- (3) Employers or their officers or employees, or the trustees of any employee trust plan, to the extent that such employers, officers, employees, or trustees are engaged in the administration or operation of any program of employee benefits for their own employees or the employees of their subsidiaries or affiliates involving the use of insurance issued by a licensed insurance company; provided that such employers, officers, employees, or trustees are not in any manner compensated, directly or indirectly, by the insurance company issuing such insurance.
- (4) Agency office employees acting within the confines of the agent's office, under the direction and supervision of the duly licensed agent and within the scope of such agent's license, in the acceptance of requests for insurance and payment of premiums and the performance of clerical, stenographic, and similar office duties.

- (5) Licensed insurers authorized to write the kinds of insurance described in G.S. 58-72(1) through G.S. 58-72(3) that do business without the involvement of a licensed agent.

" § 58-615. *License requirements.*--The Commissioner shall not issue or continue any license of an agent, broker, limited representative, adjuster, or motor vehicle damage appraiser except as follows:

(a) Application. Application shall be made to the Commissioner by the applicant on a form prescribed by the Commissioner.

(b) Age. Every individual applicant for license under this Article must be 18 years or more of age.

(c) Character. An applicant for any license under this Article must be deemed by the Commissioner to be competent, trustworthy and financially responsible, and must have not willfully violated the insurance laws of this or any other state.

(d) Education and Training.

- (1) Each applicant must have had special education, training, or experience of sufficient duration and extent reasonably to satisfy the Commissioner that the applicant possesses the competence necessary to fulfill the responsibilities of an agent, broker, limited representative, adjuster, or motor vehicle damage appraiser.
- (2) All individual applicants for licensing as life, accident and health agents or as fire and casualty agents shall furnish evidence satisfactory to the Commissioner of successful completion of at least 40 hours of instruction, which shall in all cases include the general principles of insurance and any other topics that the Commissioner establishes by regulation; and which shall, in the case of life, accident and health insurance applicants, include the principles of life insurance and, in the case of fire and casualty insurance applicants, shall include instruction in fire and casualty insurance. Any applicant who submits satisfactory evidence of having successfully completed an agent training course that has been approved by the Commissioner and that is offered by or under the auspices of a fire and casualty or life insurance company admitted to do business in this State or a professional insurance association shall be deemed to have satisfied the educational requirements of this subdivision. The requirement in this subdivision for completion of 40 hours of instruction applies only to applicants for life, accident and health or fire and casualty

insurance licenses.

(e) Examination.

- (1) After completion and filing of the application with the Commissioner, except as provided in G.S. 58-616, the Commissioner shall require each applicant for license as an agent, adjuster, or motor vehicle damage appraiser to take a written examination as to his competence to be licensed. The applicant must take and pass the examination according to requirements prescribed by the Commissioner.
- (2) The Commissioner may require any licensed agent, adjuster, or motor vehicle damage appraiser to take and successfully pass an examination in writing, testing his competence and qualifications as a condition to the continuance or renewal of his license, if the licensee has been found guilty of any violation of any provision of this Chapter or Chapters 57 or 57B of the General Statutes. If an individual fails to pass such an examination, the Commissioner shall revoke all licenses issued in his name and no license shall be issued until such individual has passed an examination as provided in this Article.
- (3) Each examination shall be as the Commissioner prescribes and shall be of sufficient scope to test the applicant's knowledge of:
 - a. The terms and provisions of the policies or contracts of insurance he proposes to effect; or
 - b. The types of claims or losses he proposes to adjust; and
 - c. The duties and responsibilities of such a license; and
 - d. The current laws of this State applicable to such a license.
- (4) The answers of the applicant to any such examination shall be written by the applicant under the Commissioner's supervision. The Commissioner shall give examinations at such times and places within this State as he deems necessary reasonably to serve the convenience of both the Commissioner and applicants; Provided that the Commissioner is authorized to contract directly with persons for the processing of examination application forms and for the administration and grading of the examinations required by this section; the Commissioner is authorized to charge a reasonable fee not to exceed thirty-five dollars (\$35.00), in addition to the

registration fee charged under G.S. 58-634, to offset the cost of the examination contract authorized by this subsection; and such contracts shall not be subject to Article 3 of Chapter 143 of the General Statutes.

- (5) The Commissioner shall collect in advance the examination and registration fees provided in G.S. 58-634 and in subsection (4) of this section. The Commissioner shall make or cause to be made available to all applicants, for a reasonable fee to offset the costs of production, materials that he deems necessary for the applicants' proper preparation for such exams. The Commissioner is empowered to contract directly with publishers and other suppliers for the production of such preparatory materials, and contracts so let by the Commissioner shall not be subject to Article 3 of Chapter 143 of the General Statutes.

(f) Brokers.

- (1) Bond. Prior to issuance of a license as a broker, the applicant shall file with the Commissioner and thereafter, for as long as the license remains in effect, shall keep in force a bond in favor of the State of North Carolina for the use of aggrieved parties in the sum of not less than fifteen thousand dollars (\$15,000), executed by an authorized corporate surety approved by the Commissioner. The aggregate liability of the surety for any and all claims on any such bond shall in no event exceed the sum thereof. The bond shall be conditioned on the accounting by the broker (i) to any person requesting the broker to obtain insurance for moneys or premiums collected in connection therewith, (ii) to any licensed insurer or agent who provides coverage for such person with respect to any such moneys or premiums, and (iii) to any association of insurers under any plan or plans for the placement of insurance under the laws of North Carolina which afforded coverage for such person with respect to any such moneys or premiums. No such bond shall be terminated unless at least 30 days' prior written notice thereof is given by the surety to the licensee and the Commissioner. Upon termination of the license for which the bond was in effect, the Commissioner shall notify the surety within 10 business days.
- (2) Other Requirements. An applicant must hold a valid agent's license at the time of application for the broker's

license and throughout the duration of the broker's license. A broker's license shall be issued to cover only those kinds of insurance authorized by his agent's license. Suspension or revocation of the agent's license shall cause immediate revocation of the broker's license.

(g) Denial of License. If the Commissioner finds that the applicant has not fully met the requirements for licensing, he shall refuse to issue the license and notify in writing the applicant and the appointing insurer, if any, of such denial, stating the grounds therefor.

(h) Resident-Nonresident Licenses. The Commissioner shall issue a resident or nonresident license to an agent, broker, limited representative, adjuster, or motor vehicle damage appraiser as follows:

(1) Resident.

An individual may qualify for a license as a resident if he resides in this State. Any license issued pursuant to an application claiming residency in this State shall be void if the licensee, while holding a resident license in this State, also holds or makes application for a resident license in, or thereafter claims to be a resident of, any other state, or ceases to be a resident of this State; provided, however, if the applicant is a resident of a county in another state, the border of which county is contiguous with the state line of this State, the applicant may qualify as a resident for licensing purposes in this State.

(2) Nonresident.

a. An individual may qualify for a license under this Article as a nonresident if he holds a like license in another state or territory of the United States. An individual may qualify for a license as a nonresident motor vehicle damage appraiser or a nonresident adjuster if the applicant's state of residency does not offer such licenses and such applicant meets all other requirements for licensure of a resident. A license issued to a nonresident of this State shall grant the same rights and privileges afforded a resident licensee, except as provided in subsection (i) of this section.

b. A nonresident of this State may be licensed without taking an otherwise required written examination if the Commissioner of the state of the applicant's residence certifies, by facsimile signature and seal, that the applicant has passed a similar written examination or has been a continuous holder, prior to the time such written examination was required, of a license like the license being applied for in this State.

- c. Notwithstanding other provisions of this Article, no new bond shall be required for a nonresident broker if the Commissioner is satisfied that an existing bond covers his insurance business in this State.
- d. Process Against Nonresident Licensees.
 - 1. Each licensed nonresident agent, broker, adjuster, limited representative, or motor vehicle damage appraiser shall by the act of acquiring such license be deemed to appoint the Commissioner as his attorney to receive service of legal process issued against the agent, broker, adjuster, limited representative, or motor vehicle damage appraiser in this State upon causes of action arising within this State.
 - 2. The appointment shall be irrevocable for as long as there could be any cause of action against the nonresident arising out of his insurance transactions in this State.
 - 3. Duplicate copies of such legal process against such nonresident licensee shall be served upon the Commissioner either by a person competent to serve a summons, or through registered mail. At the time of such service the plaintiff shall pay to the Commissioner a fee of five dollars (\$5.00), taxable as costs in the action to defray the expense of such service.
 - 4. Upon receiving such service, the Commissioner or his duly appointed deputy shall within three business days send one of the copies of the process, by registered or certified mail, to the defendant nonresident licensee at his last address of record as filed with the Commissioner.
 - 5. The Commissioner shall keep a record of the day and hour of service upon him of all such legal process. No proceedings shall be had against the defendant nonresident licensee, and such defendant shall not be required to appear, plead or answer until the expiration of 40 days after the date of service upon the Commissioner.
- e. If the Commissioner revokes or suspends any nonresident's license through a formal proceeding under this Article, he shall promptly notify the appropriate Commissioner of the licensee's residence of such action and of the particulars thereof.

(i) **Retaliatory Provision.** Whenever, by the laws or regulations of any other state or jurisdiction, any limitation of rights and privileges, conditions precedent, or any other requirements are imposed upon residents of this State who are nonresident applicants or licensees of such other state or jurisdiction in addition to, or in excess of, those imposed on nonresidents under this Article, the same such requirements shall be imposed upon such residents of such other state or jurisdiction.

(j) **Reciprocity Provision.** To the extent that other states that provide for the licensing and regulation of and payment of commissions to agents, limited representatives, or brokers, waive restrictions on the basis of reciprocity with respect to North Carolina licensees holding nonresident licenses in such states, all such restrictions on licensees from such states holding North Carolina nonresident licenses shall be waived.

" § 58-616. *Exemption from examination.*--The following are exempt from the requirement for a written examination:

- (1) Any applicant for a license covering the same kind or kinds of insurance for which the applicant was licensed under a like license in this State, other than a temporary license, within the 24 months next preceding the date of application, unless such previous license was revoked, suspended, or not continued by the Commissioner.
- (2) An applicant who has been licensed under a like license in another state within 24 months prior to his application for a license in this State, and who files with the Commissioner the certificate of the public official having supervision of insurance in such other state as to the applicant's license and good standing in such state.
- (3) An applicant who has attained the designation of Chartered Life Underwriter (CLU), Chartered Financial Consultant (ChFC), Life Underwriter Training Council Fellow (LUTCF) or Fellow of Life Management Institute (FLMI), shall be exempt from the examination for licenses in G.S. 58-614(c)(1) and (2).
- (4) An applicant who has attained the designation of Chartered Property and Casualty Underwriter (CPCU) shall be exempt from the examination for licenses in G.S. 58-614(c)(3) and (7).
- (5) Applicants for license as limited representatives.
- (6) Applicants for license as agents for companies or associations specified in G.S. 58-124.28.

" § 58-617. *Appointment of agents.*--(a) No individual who holds a valid insurance agent's license issued by the Commissioner shall, either directly or for an insurance agency, solicit, negotiate, or

otherwise act as an agent for an insurer by which the individual has not been appointed.

(b) Any insurer authorized to transact business in this State may appoint as its agent any individual who holds a valid agent's license issued by the Commissioner. Upon the appointment, the individual shall be authorized to act as an agent for the appointing insurer for all kinds of insurance for which the insurer is authorized in this State and for which the appointed agent is licensed in this State, unless specifically limited.

(c) Within 30 days the insurer shall file in a form prescribed by the Commissioner the names, addresses, and other information required by the Commissioner for its newly-appointed agents.

(d) Every insurer shall remit in a manner prescribed by the Commissioner the appointment fee specified in G.S. 58-634 for each appointed agent.

(e) An appointment shall continue in effect as long as the appointed agent is properly licensed and the appointing insurer is authorized to transact business in this State, unless the appointment is cancelled. Upon the cancellation of an appointment the insurer shall, within 30 days, file written notice of cancellation with the Commissioner in a form prescribed by him indicating the date of cancellation. A copy shall be provided to the agent by the insurer.

(f) Prior to April 1 of each year, every insurer shall remit in a manner prescribed by the Commissioner the renewal appointment fee specified in G.S. 58-634.

(g) Any agent license in effect on February 1, 1988, shall be deemed to be an appointment for the unexpired term of that license.

(h) No insurer shall accept an insurance application from an individual who is not currently appointed by the insurer.

"§ 58-618. *Denial, suspension, revocation, or nonrenewal of licenses and appointments.*--(a) The Commissioner may suspend, revoke, or refuse to issue or renew any license issued under this Article if, after notice to the licensee or applicant and hearing in accordance with the provisions of Article 3A of Chapter 150B, he finds as to the licensee any one or more of the following conditions:

- (1) Any untrue material statement in the license application;
- (2) Any cause for which issuance of the license could have been refused had it then existed and been known to the Commissioner at the time of issuance;
- (3) Violation of, or noncompliance with, any insurance laws, or of any lawful rule, or order of the Commissioner or of a

- Commissioner of another state;
- (4) Obtaining or attempting to obtain any such license through misrepresentation or fraud;
 - (5) Improperly withholding, misappropriating, or converting to his own use any moneys belonging to policyholders, insurers, beneficiaries or others received in the course of his insurance business;
 - (6) Misrepresentation of the terms of any actual or proposed insurance contract;
 - (7) Willfully overinsuring property;
 - (8) Conviction of a misdemeanor involving moral turpitude, or conviction of a felony;
 - (9) The person has been found guilty of any unfair trade practice or fraud;
 - (10) In the conduct of his affairs under the license, the licensee has used fraudulent, coercive or dishonest practices, or has shown himself to be incompetent, untrustworthy, or financially irresponsible;
 - (11) His license has been suspended or revoked in any other state, province, district, or territory;
 - (12) The person has forged another's name to an application for insurance; or
 - (13) The person has cheated on an examination for an insurance license.

(b) Notwithstanding the notice and hearing requirements of subsection (a) of this section, if the Commissioner finds that the public health, safety, or welfare requires emergency action and incorporates this finding in his order, summary suspension of a license may be ordered effective on the date specified in the order or on service of the certified copy of the order at the last known address of the licensee, whichever is later, and effective during the proceedings to suspend, revoke, or refuse renewal provided for in subsection (a) of this section. The proceedings shall be promptly commenced and determined.

(c) In the event that the action by the Commissioner is to deny or not renew an application for a license, he shall notify the applicant or licensee and advise, in writing, the applicant or licensee of the reasons for the denial or nonrenewal of the license. Within 30 days of receipt of notification the applicant or licensee may make written demand upon the Commissioner for a hearing to determine the reasonableness of the Commissioner's action. Such hearing shall be scheduled within 30 days from the date of receipt of the written demand by the applicant and shall be held pursuant to the provisions of Article 3A of Chapter

150B.

(d) For the purposes of investigation under this section, the Commissioner shall have all the power conferred upon him by G.S. 58-44.4.

(e) The license of a partnership or corporation may be suspended, revoked, not continued, or refused if the Commissioner finds, after hearing, that an individual licensee's violation was known or should have been known by one or more of the partners, officers, or managers acting on behalf of the partnership or corporation and such violation was not reported to the Commissioner nor corrective action taken in relation thereto.

(f) Upon the filing for protection under the United States Bankruptcy Code by any person licensed under this Article, or by any insurance agency in which such licensed person holds a position of employment, management or ownership, such person shall notify the Commissioner of the filing for protection within three business days after the filing. Upon the appointment of a receiver by a court of this State for any person licensed under this Article, or for any insurance agency in which such licensed person holds a position of employment, management or ownership, such person shall notify the Commissioner of the appointment within three business days thereafter. The willful failure to notify the Commissioner within three business days after the filing for protection or the appointment of a receiver shall, after hearing, cause the license of any person failing to make such notification to be suspended for a period of not less than 60 days nor more than three years, in the discretion of the Commissioner.

(g) If the Commissioner refuses to grant a license, or suspends, or revokes a license, any appointment of such applicant or licensee shall likewise be revoked. No individual whose license is revoked shall be issued another license without first complying with all requirements of this Article.

(h) The provisions of G.S. 58-9.7 apply to any person subject to licensure under this Article.

(i) No person shall be issued a license or appointment to enter the employment of any agency or person, which agency or person is at that time found by the Commissioner to be in violation of any of the insurance laws of this State, or which has been in any manner disqualified under the laws of this State to engage in the insurance business.

" § 58-619. *Surrender, loss or destruction of license.*--(a) The Commissioner shall notify all appointing insurers, where applicable, and the licensee regarding any suspension, revocation, or nonrenewal

of license by the Commissioner.

(b) Upon suspension, revocation or reinstatement of any license, the Commissioner shall notify the Central Office of the NAIC.

(c) Any licensee who ceases to maintain his residency in this State as defined in G.S. 58-615 shall deliver his insurance license or licenses to the Commissioner by personal delivery or by mail within 30 days after terminating said residency.

(d) The Commissioner may issue a duplicate license for any lost, stolen, or destroyed license issued pursuant to this Article upon a written request from the licensee and payment of appropriate fees.

" § 58-620. *Cancellation reports.*--(a) If a licensee's appointment or license is cancelled by the insurer or other employer, such insurer or employer shall give written notice of the cancellation and the effective date thereof to the Commissioner within 30 days, and to the licensee where reasonably possible. The Commissioner may require the insurer to demonstrate that the insurer has made a reasonable effort to give such notice to the licensee. Nothing in this subsection affects any cancellation provisions in any contract between a licensee and an insurer or other employer.

(b) All such notices of cancellation shall be filed within 30 days in such form prescribed by the Commissioner stating the date of such cancellation.

(c) In the event the cancellation is for any of the causes listed under G.S. 58-618, the insurer shall so notify the Commissioner. The contents of such notification shall be deemed to be privileged in any civil action between the reporting insurer and the terminated licensee.

" § 58-621. *Countersignature and related laws.*--Subject to the retaliatory provisions of G.S. 58-615(i), there shall be no requirement that a licensed resident agent or broker must countersign, solicit, transact, take, accept, deliver, record, or process in any manner an application, policy, contract, or any other form of insurance on behalf of a nonresident agent or broker or an authorized insurer; or share in the payment of commissions, if any, related to such business.

" § 58-622. *Temporary licensing.*--(a) The Commissioner may issue a temporary license as an agent, broker, or limited representative for a period without requiring an examination if the Commissioner deems that such temporary license is necessary for the servicing of insurance business in the following cases:

- (1) To the surviving spouse or next of kin, or to the administrator or executor or employee thereof, of such deceased licensee or to the spouse, next of kin, employee, or legal guardian of such licensee who becomes disabled;
 - (2) To a member or employee of a licensed partnership or officer or employee of a licensed corporation, upon the death or disability of an individual designated in or registered as to the license;
 - (3) To the designee of a licensee entering active service in the armed forces of the United States of America; or
 - (4) To an applicant for licensing who is appointed as an agent of a life insurer that writes debit or industrial life or health insurance.
- (b) To be eligible for any such temporary license, an individual must be qualified as for a permanent license except as to experience, training or the taking of the examination.
- (c) No temporary license shall be effective for more than 90 days in any 12-month period and shall automatically terminate upon such temporary licensee's failing the examination required in G.S. 58-615.
- (d) An individual requesting a temporary license on account of death or disability of an agent or broker shall be licensed to represent only those insurers that had appointed such agent at the time of death or commencement of disability.
- (e) The fee paid to the Commissioner for issuance of a temporary license shall be credited toward the fee required for a permanent license that is issued to replace the temporary license.
- " § 58-623. *Special provisions for adjusters and motor vehicle damage appraisers.*--(a) It shall be unlawful and cause for revocation of license for a licensed adjuster to engage in the practice of law.
- (b) On behalf and on request of an insurer by which he is appointed or for which he is licensed, any agent or limited representative may from time to time act as an adjuster and investigate and report upon claims without being required to be licensed as an adjuster, provided: In no event may any agent or limited representative adjust any losses in any amount where his remuneration for the sale of insurance is in any way dependent upon the adjustment of such losses.
- (c) Upon the filing of the application for the license as adjuster and the advance payment of the examination fee and upon the filing with the Commissioner of a certificate signed by the employer of the applicant certifying that the applicant is an individual of good character and is employed by the signer of the certificate and will operate as a

student or learner under the instruction and general supervision of a licensed adjuster, and that the employer will be responsible for the adjustment acts of the learner during the learning period, the Commissioner may issue to the applicant a learner's permit authorizing the applicant to act as an adjuster for a learning period of 90 days without a requirement of any other or additional license; provided that not more than one learner permit shall ever be issued to one individual.

(d) No license shall be required of an adjuster licensed as such in another state for the adjustment in this State of a single loss, or of losses arising out of a catastrophe common to all such losses; provided that such adjuster notifies the Commissioner in writing prior to the adjusting of such loss or losses.

(e) The Commissioner may permit an experienced adjuster, who regularly adjusts in another state and who is licensed in such other state (if such state requires a license), to act as an adjuster in this State without a North Carolina license, for emergency insurance adjustment work, for a period of not exceeding 30 days, done for an employer who is an adjuster licensed by this State or who is a regular employer of one or more adjusters licensed by this State; provided that the employer shall furnish to the Commissioner a notice in writing immediately upon the beginning of any such emergency insurance adjustment work.

(f) The Commissioner may permit an experienced motor vehicle damage appraiser who is regularly appraising in another state and who is licensed in such other state (if such state requires a license) to act as a motor vehicle damage appraiser in this State without a North Carolina license for emergency motor vehicle damage appraisal work for a period not exceeding 30 days done for an employer who notifies the Commissioner, in writing, at the beginning of the period of emergency appraisal work and who is:

- (1) An insurance adjuster licensed by this State;
- (2) A motor vehicle damage appraiser licensed by this State;
- (3) A regular employer of one or more insurance adjusters licensed by this State; or
- (4) A regular employer of one or more motor vehicle damage appraisers licensed by this State.

"§ 58-624. *'Twisting' with respect to insurance policies defined; penalties.*--Any licensee who shall engage in 'twisting', as defined in this section, shall be subject to the provisions of G.S. 58-618 and G.S. 58-9.7. As used in this section 'twisting' means the willful, material misrepresentation of an insurance contract, whereby an insured is deceived and induced to cancel or terminate insurance in force to such insured's detriment.

" § 58-625. *Discrimination forbidden.*--No agent or representative of any company doing the business of insurance as defined in G.S. 58-72 shall make any discrimination in favor of any person.

" § 58-626. *Rebates and charges in excess of premium prohibited.*--(a) No agent, broker or limited representative shall knowingly charge, demand or receive a premium for any policy of insurance except in accordance with the applicable filing approved by the Commissioner of Insurance. No agent, broker or limited representative shall pay, allow, or give, or offer to pay, allow, or give, directly or indirectly, as an inducement to insurance, or after insurance has been effected, any rebate, discount, abatement, credit, or reduction of the premium named in a policy of insurance, or any special favor or advantage in the dividends or other benefits to accrue thereon, or any valuable consideration or inducement whatever, not specified in the policy of insurance. No insured named in a policy of insurance, nor any employee of such insured, shall knowingly receive or accept, directly or indirectly, any such rebate, discount, abatement or reduction of premium, or any special favor or advantage or valuable consideration or inducement. Nothing herein contained shall be construed as prohibiting the payment of commissions or other compensation to duly licensed agents, brokers and limited representatives, nor as prohibiting any participating insurer from distributing to its policyholders dividends, savings or the unused or unabsorbed portion of premiums and premium deposits. As used in this section the word 'insurance' includes suretyship and the word 'policy' includes bond.

(b) No agent, broker, or limited representative shall knowingly charge to or demand or receive from an applicant for insurance any money or other consideration in return for the processing of applications or other forms or for the rendering of services associated with the issuance or renewal of a contract of insurance, which money or other consideration is in addition to the filed and approved premium for such contract, unless the applicant consents in writing before any services are rendered.

" § 58-627. *Rebate of premiums on credit life and credit accident and health insurance; retention of funds by agent.*--It shall be unlawful for any insurance carrier, or officer, agent or representative of an insurance company writing credit life and credit accident and health insurance, as defined in G.S. 58-195.2 and G.S. 58-254.8, or combination credit life, accident and health, hospitalization and disability insurance in connection with loans, to permit any agent or representative of such company to retain any portion of funds received

for the payment of losses incurred, or to be incurred, under such policies of insurance issued by such company, or to pay, allow, permit, give or offer to pay, allow, permit or give, directly, or indirectly, as an inducement to insurance, or after insurance has been effected, any rebate, discount, abatement, credit or reduction of the premium, to any loan agency, insurance agency or broker, or to any creditor of the debtor on whose account the insurance was issued, or to any person, firm or corporation which received a commission or fee in connection with the issuance of such insurance: Provided, that this section shall not prohibit the payment of commissions to a licensed insurance agent or agency or limited representative on the sale of a policy of credit life and credit accident and health insurance, or combination credit life, accident and health, hospitalization and disability insurance in connection with loans.

It shall be unlawful for any agent, agency, broker, limited representative, or insured named in any such policy, or for any loan agency or broker, or any agent, officer or employee of any loan agency or broker to receive or accept, directly or indirectly, any such rebate, discount, abatement, credit or reduction of the premium as set out in this section.

" § 58-628. *Agents personally liable; representing unlicensed company prohibited; penalty.*--Any person representing an insurer is personally liable on all contracts of insurance unlawfully made by or through him, directly or indirectly, for any company not authorized to do business in the State. A person or citizen of the State who fills up or signs any open policy, certificate, blank or coupon of, or furnished by, an unlicensed company, agent, broker or limited representative, the effect of which is to bind any insurance in an unlicensed company on property in this State, is the representative of such company, and personally liable for all licenses and taxes due on account of such transaction. If any person shall unlawfully solicit, negotiate for, collect or transmit a premium for a contract of insurance or act in any way in the negotiation or transaction of any unlawful insurance with an insurance company not licensed to do an insurance business in North Carolina, he shall be guilty of a misdemeanor and upon conviction shall pay a fine of not less than one thousand dollars (\$1,000) nor more than two thousand dollars (\$2,000) or be imprisoned for not less than one nor more than two years, or both, at the discretion of the court.

" § 58-629. *Payment of premium to agent valid; obtaining by fraud a crime.*--Any agent, broker or limited representative who acts for a person other than himself negotiating a contract of insurance is, for the purpose of receiving the premium therefor, the company's agent,

whatever conditions or stipulations may be contained in the policy or contract. Such agent, broker or limited representative knowingly procuring by fraudulent representations payment, or the obligation for the payment, of a premium of insurance, shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than one thousand dollars (\$1,000) nor more than five thousand dollars (\$5,000) or by imprisonment for not more than one year, or both, in the discretion of the court.

" § 58-630. *False statements in applications for insurance.*--If any agent, examining physician, applicant, or other person shall knowingly or willfully make any false or fraudulent statement or representation in or with reference to any application for insurance, or shall make any such statement for the purpose of obtaining any fee, commission, money or benefit from any company engaged in the business of insurance in this State, he shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than one thousand dollars (\$1,000) nor more than five thousand dollars (\$5,000) or by imprisonment for not less than 30 days nor more than one year, or both, in the discretion of the court. This section shall also apply to contracts and certificates issued under General Statutes Chapters 57 and 57B.

" § 58-631. *Agents signing certain blank policies.*--Any agent or limited representative who signs any blank contract or policy of insurance is guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not less than one thousand dollars (\$1,000) nor more than five thousand dollars (\$5,000); provided, however, that transportation ticket policies of accident insurance and baggage insurance policies may be countersigned in blank for issuance only through coin-operated machines, subject to regulations prescribed by the Commissioner.

" § 58-632. *Adjuster acting for unauthorized company.*--If any person shall act as adjuster on a contract made otherwise than as authorized by the laws of this State, or by any insurance company or other person not regularly licensed to do business in this State, or shall adjust or aid in the adjustment, either directly or indirectly, of a claim arising under a contract of insurance not authorized by the laws of the State, he shall be deemed guilty of a misdemeanor and shall, upon conviction, be fined not less than one thousand dollars (\$1,000) nor more than five thousand dollars (\$5,000), or imprisoned not less than six months nor more than two years, or both, in the discretion of the court.

" § 58-633. *Agent, adjuster, etc., acting without a license or violating insurance law.*--If any person shall assume to act either as principal, agent, broker, limited representative, adjuster or motor vehicle damage appraiser without license as is required by law or pretending to be a principal, agent, broker, adjuster or licensed motor vehicle damage appraiser, shall solicit, examine or inspect any risk, or shall examine into, adjust, or aid in adjusting any loss, investigate or advise relative to the nature and amount of damages to motor vehicles or the amount necessary to effect repairs thereto, or shall receive, collect, or transmit any premium of insurance, or shall do any other act in the soliciting, making or executing any contract of insurance of any kind otherwise than the law permits, or as principal or agent shall violate any provision of law contained in this Chapter, the punishment for which is not elsewhere provided for, he shall be deemed guilty of a misdemeanor, and on conviction shall pay a fine or not less than one thousand dollars (\$1,000) nor more than five thousand dollars (\$5,000), or be imprisoned for not less than one nor more than two years, or both, at the discretion of the court.

" § 58-634. *Fees.*--(a) The following table indicates the annual fees that are required for the respective licenses issued under this Article and Article 36 of this Chapter:

| | |
|---|---------|
| Adjuster | \$50.00 |
| Adjuster, crop hail only | 10.00 |
| Agent appointment cancellation (paid by insurer) | 5.00 |
| Agent appointment, individual | 10.00 |
| Agent appointment, nonindividual | 25.00 |
| Agent, overseas military | 10.00 |
| Broker, nonresident | 50.00 |
| Broker, resident | 25.00 |
| Limited representative | 10.00 |
| Limited representative cancellation (paid by insurer) | 5.00 |
| Motor vehicle damage appraiser | 50.00 |
| Surplus lines licensee, corporate | 50.00 |
| Surplus lines licensee, individual | 50.00 |

These fees are in lieu of any other license fees. Fees paid by an insurer on behalf of a person who is licensed to represent the insurer shall be paid to the Commissioner on a quarterly or monthly basis, in the discretion of the Commissioner.

(b) Whenever a temporary license may be issued pursuant to this Article, the fee shall be at the same rate as provided in subsection (a) of this section; and any amounts so paid for a temporary license may be credited against the fee required for issuance of the permanent

license.

(c) Any person not registered who is required by law or administrative rule to secure a license shall, upon application for registration, pay to the Commissioner a fee of ten dollars (\$10.00). In the event additional licensing for other kinds of insurance is requested, a fee of ten dollars (\$10.00) shall be paid to the Commissioner upon application for registration for each additional kind of insurance.

(d) The requirement for an examination or a registration fee does not apply to agents for domestic farmers' mutual assessment fire insurance companies or associations specified in G.S. 105-228.4.

(e) In the event a license issued under this Article is lost, stolen, or destroyed, the Commissioner may issue a duplicate license upon a written request from the licensee and payment of a fee of one dollar (\$1.00)."

Sec. 2. G.S. 57-12 is rewritten to read:

"Every agent of any hospital service corporation authorized to do business in this State under the provisions of this Chapter shall be subject to the licensing provisions of Article 45 of Chapter 58."

Sec. 3. G.S. 57B-13 is rewritten to read:

"The licensing provisions of Article 45 of Chapter 58 shall apply to the licensing of Chapter 57B agents."

Sec. 4. G.S. 58-42.1 is rewritten to read:

"Any insurer who shall engage in 'twisting', as defined in this section, shall be subject to the provisions of G.S. 58-37 and G.S. 58-38 or G.S. 58-44.4 and G.S. 58-9.7. As used in this section 'twisting' means the willful, material misrepresentation of an insurance contract, whereby an insured is deceived and induced to cancel or terminate insurance in force to such insured's detriment."

Sec. 5. G.S. 58-44.3 is rewritten to read:

"No company doing the business of insurance as defined in G.S. 58-72 shall make any discrimination in favor of any person."

Sec. 6. G.S. 58-44.4 is rewritten to read:

"When the Commissioner has information of a violation by an insurance company of any of the provisions of G.S. 58-42.1, 58-44.3 or 58-614(h), he shall immediately investigate or cause to be investigated such violation, and if any such insurance company has violated any of said provisions he may immediately revoke its license for not less than three nor more than six months for a first offense, and for each offense thereafter for not less than one year. For the purpose of enforcing the provisions of said sections the Commissioner is authorized and empowered to examine persons, administer oaths, and require production of papers and records. A failure or refusal on

the part of any such insurance company, licensed to do business in this State, or representative thereof, to appear before the Commissioner when requested to do so, or to produce records and papers, or answer under oath, subjects such company, or representative, to the penalties of this section."

Sec. 7. G.S. 58-44.5 is rewritten to read:

"No insurer or employee thereof shall knowingly charge, demand or receive a premium for any policy of insurance except in accordance with the applicable filing approved by the Commissioner of Insurance. No insurer or employee thereof shall pay, allow, or give, or offer to pay, allow, or give, directly or indirectly, as an inducement to insurance, or after insurance has been effective, any rebate, discount, abatement, credit, or reduction of the premium named in a policy of insurance, or any special favor or advantage in the dividends or other benefits to accrue thereon, or any valuable consideration or inducement whatever, not specified in the policy of insurance. No insured named in a policy of insurance, nor any employee of such insured, shall knowingly receive or accept, directly or indirectly, any such rebate, discount, abatement or reduction of premium, or any special favor or advantage or valuable consideration or inducement. Nothing herein contained shall be construed as prohibiting the payment of commissions or other compensation to duly licensed agents, brokers and limited representatives, nor as prohibiting any participating insurer from distributing to its policyholders dividends, savings or the unused or unabsorbed portion of premiums and premium deposits. As used in this section the word 'insurance' includes suretyship and the word 'policy' includes bond."

Sec. 8. G.S. 58-44.7 is rewritten to read:

"It shall be unlawful for any insurance carrier, or officer, agent or representative of an insurance company writing credit life and credit accident and health insurance, as defined in G.S. 58-195.2 and G.S. 58-254.8, or combination credit life, accident and health, hospitalization and disability insurance in connection with loans, to permit any agent or representative of such company to retain any portion of funds received for the payment of losses incurred, or to be incurred, under such policies of insurance issued by such company, or to pay, allow, permit, give or offer to pay, allow, permit or give, directly or indirectly, as an inducement to insurance, or after insurance has been effected, any rebate, discount, abatement, credit or reduction of the premium, to any loan agency, insurance agency or broker, or to any creditor of the debtor on whose account the insurance was issued, or to any person, firm or corporation which received a commission or fee in connection with the issuance of such insurance: Provided, that this section shall not prohibit the payment

of commissions to a licensed insurance agent or agency or limited representative on the sale of a policy of credit life and credit accident and health insurance, or combination credit life, accident and health, hospitalization and disability insurance in connection with loans."

Sec. 9. G.S. 58-52 is rewritten to read:

"If any person shall assume to act either as principal, agent, broker, limited representative, adjuster or motor vehicle damage appraiser without license as is required by law or, pretending to be a principal, agent, broker, limited representative, adjuster or licensed motor vehicle damage appraiser, shall solicit, examine or inspect any risk, or shall examine into, adjust, or aid in adjusting any loss, investigate or advise relative to the nature and amount of damages to motor vehicles or the amount necessary to effect repairs thereto, or shall receive, collect, or transmit any premium of insurance, or shall do any other act in the soliciting, making or executing any contract of insurance of any kind otherwise than the law permits, or as principal or agent shall violate any provision of law contained in this Chapter, the punishment for which is not elsewhere provided for, he shall be deemed guilty of a misdemeanor, and on conviction shall pay a fine of not less than one thousand dollars (\$1,000) nor more than five thousand dollars (\$5,000), or be imprisoned for not less than one nor more than two years, or both, at the discretion of the court."

Sec. 10. G.S. 58-54.2(2) is rewritten to read:

"'Person' shall mean any individual, corporation, association, partnership, reciprocal exchange, interinsurer, Lloyds insurer, fraternal benefit society, and any other legal entity engaged in the business of insurance, including agents, brokers, limited representatives, and adjusters."

Sec. 11. G.S. 58-173.8(d) is rewritten to read:

"An agent who is licensed under Article 45 of this Chapter as an agent of a company which is a member of the Association established under this Article shall not be deemed an agent of the Association."

Sec. 12. G.S. 58-173.19(b) is rewritten to read:

"An agent who is licensed under Article 45 of this Chapter as an agent of a company which is a member of the Association established under this Article shall not be deemed an agent of the Association."

Sec. 13. G.S. 58-383(3) is rewritten to read:

"'Agent' shall have the meaning as set forth in Article 45 of this Chapter and shall include limited representatives, surplus lines licensees, salesmen, or representatives of a medical, surgical, hospital, dental, or optometric service plan, and salesmen or representatives of

a health maintenance organization."

Sec. 14. G.S. 58-26(a) is amended by deleting "are defined by G.S. 58-39.4 and" from the text of this subsection.

Sec. 15. G.S. 58-26(b) is amended by deleting "as defined by G.S. 58-39.4(a)" from the text of this subsection.

Sec. 16. G.S. 58-66 is amended by deleting from the last paragraph of the section "as listed in G.S. 105-228.7, which licenses shall run from April 1 of each year".

Sec. 17. G.S. 58-149 is amended by deleting ", by constituted agents resident herein," from the text of this section.

Sec. 18. G.S. 58-433(b) is amended by deleting the word "general" from the first paragraph of this subsection.

Sec. 19. G.S. 58-422(6), 58-509(a), and 58-509(b) are amended by substituting Article 45 for Article 3 in the text of those subsections.

Sec. 20. General Statute Chapter 58 is amended by repealing the following sections: G.S. 58-39.4, 58-40, 58-40.1, 58-40.2, 58-40.3, 58-40.4, 58-40.5, 58-40.6, 58-41, 58-41.1, 58-41.2, 58-41.2A, 58-41.3, 58-41.4, 58-41.5, 58-43, 58-43.1, 58-44, 58-44.1, 58-44.2, 58-44.4A, 58-44.8, 58-45, 58-46, 58-47, 58-48, 58-49, 58-50, 58-51, 58-51.1, 58-51.2, 58-51.3, 58-51.4, 58-52.1, 58-53, 58-67, 58-150(4), 58-168, and 58-169.

Sec. 21. G.S. 105-228.7 is repealed.

Sec. 22. Subsection (d) of G.S. 58-614 in Section 1 of this act shall become effective October 1, 1987. The remainder of this act shall become effective February 1, 1988.

In the General Assembly read three times and ratified this the 17th day of July, 1987.

H.B. 666

CHAPTER 630**AN ACT TO PROVIDE FOR INSTRUCTION IN THE PUBLIC SCHOOLS ON THE PREVENTION OF AIDS AND OTHER COMMUNICABLE DISEASES.**

The General Assembly of North Carolina enacts:

Section 1. G.S. 115C-81 is amended by adding a new subsection (a2) to read:

"(a2) Instruction in the prevention of Acquired Immune Deficiency Syndrome (AIDS) virus infection and other communicable diseases shall be offered in the public schools and shall be conducted under guidelines to be developed by the State Board of Education emphasizing parental involvement, abstinence from sex and drugs, and

other accurate and appropriate information to prevent the spread of the diseases."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 17th day of July, 1987.

H.B. 683

CHAPTER 631

AN ACT TO IMPROVE THE SOLVENCY PROTECTION OF HEALTH MAINTENANCE ORGANIZATIONS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 57B-2 is amended by adding the following:

"(i) 'Net worth' means the excess of total assets over the total liabilities and may include borrowed funds that are repayable only from the net earned income of the health maintenance organization and repayable only with the advance permission of the Commissioner. In determining net worth only tangible assets shall be considered.

(j) 'Working capital' means the excess of current assets over current liabilities; provided that the only borrowed funds that may be included in working capital must be those borrowed funds that are repayable only from net earned income and must be repayable only with the advance permission of the Commissioner."

Sec. 2. G.S. 57B-4(a) is amended by deleting the final paragraph of that subsection beginning with "The Commissioner may require" and ending with "accrual."

Sec. 3. General Statute Chapter 57B is amended by adding a new section to read:

"§ 57B-4.1. *Deposits.*--(a) The Commissioner shall require a minimum deposit of five hundred thousand dollars (\$500,000) for all full service medical health maintenance organizations or such higher amount as he deems necessary for the protection of enrollees. The minimum deposit for a full service medical health maintenance organization authorized to operate on the effective date of this section and having a deposit of less than five hundred thousand dollars (\$500,000) shall be as follows:

(1) \$250,000 by December 31, 1987

(2) \$500,000 by December 31, 1988

Any health maintenance organization not authorized to do business on the effective date of this section must comply with the minimum initial deposit of five hundred thousand dollars (\$500,000).

(b) The Commissioner shall require a minimum deposit of twenty-five thousand dollars (\$25,000) for all single service health maintenance organizations or such higher amount as he deems

necessary for the protection of enrollees.

(c) All deposits required by this section shall be administered in accordance with the provisions of G.S. 58-7.5.

Sec. 4. G.S. 57B-4(a)(4) is amended by adding at the end the following:

"Such working capital shall initially be a minimum of one million five hundred thousand dollars (\$1,500,000) for any full service medical health maintenance organization. Initial working capital for a single service health maintenance organization shall be a minimum of one hundred thousand dollars (\$100,000) or such higher amount as the Commissioner shall determine to be adequate."

Sec. 5. General Statute Chapter 57B is amended by adding the following sections:

" § 57B-15.1. *Hazardous financial condition.*--(a) Whenever the financial condition of any health maintenance organization indicates a condition such that the continued operation of the health maintenance organization might be hazardous to its enrollees, creditors, or the general public, then the Commissioner may order the health maintenance organization to take such action as may be reasonably necessary to rectify the existing condition, including but not limited to one or more of the following steps:

- (1) to reduce the total amount of present and potential liability for benefits by reinsurance;
- (2) to reduce the volume of new business being accepted;
- (3) to reduce the expenses by specified methods;
- (4) to suspend or limit the writing of new business for a period of time; or
- (5) to require an increase to the health maintenance organization's net worth by contribution.

(b) The Commissioner may adopt rules to set uniform standards and criteria for the early warning that the continued operation of any health maintenance organization might be hazardous to its enrollees, creditors, or the general public, and to set standards for evaluating the financial condition of any health maintenance organization, which standards shall be consistent with the purposes expressed in subsection (a) of this section.

" § 57B-15.2. *Protection against insolvency.*--(a) The Commissioner shall require deposits in accordance with the provisions of G.S. 57B-4.1.

(b) Each full service medical health maintenance organization shall maintain a minimum net worth of not less than seven hundred fifty thousand dollars (\$750,000), which shall be increased by the amount of the contingency reserves calculated annually in accordance with the

provisions of G.S. 57B-6. If a health maintenance organization fails to comply with the net worth requirement of this subsection or subsections (c) or (d) of this section, the Commissioner is authorized to take appropriate action to assure that the continued operation of the health maintenance organization will not be hazardous to its enrollees.

(c) The minimum net worth for a health maintenance organization authorized to operate on the effective date of subsection (b) of this section and having a net worth of less than seven hundred fifty thousand dollars (\$750,000) shall be as follows:

- (1) \$150,000 by December 31, 1987
- (2) \$300,000 by December 31, 1988
- (3) \$450,000 by December 31, 1989
- (4) \$600,000 by December 31, 1990
- (5) \$750,000 by December 31, 1991

The net worth amounts required by this section shall be in addition to the contingency reserves required by G.S. 57B-6.

(d) Notwithstanding any other provision of this Chapter, a health maintenance organization authorized to offer only a single health care service plan providing a single health care service must have a minimum net worth of fifty thousand dollars (\$50,000). The minimum net worth for such plan authorized to operate on the effective date of this subsection and having a net worth of less than fifty thousand dollars (\$50,000) shall be as follows:

- (1) Twenty-five thousand dollars (\$25,000) by December 31, 1987; and
- (2) Fifty thousand dollars (\$50,000) by December 31, 1988;

The net worth amounts required by this section shall be in addition to the contingency reserves required by G.S. 57B-6.

(e) Every full service medical health maintenance organization shall have and maintain at all times an adequate plan for protection against insolvency acceptable to the Commissioner. In determining the adequacy of such a plan, the Commissioner may consider:

- (1) A reinsurance agreement preapproved by the Commissioner covering excess loss, stop-loss, or catastrophes. The agreement must provide that the Commissioner will be notified no less than 60 days prior to cancellation or reduction of coverage.
- (2) A conversion policy or policies that will be offered by an insurer to the enrollees in the event of the health maintenance organization's insolvency.
- (3) Any other arrangements offering protection against insolvency that the Commissioner may require."

Sec. 6. G.S. 57B-3(d)(1) is rewritten to read:

"(1) A health maintenance organization shall file a notice describing any modification of the operation set out in the information required by subsection (c) of this section. Such notice shall be filed with the Commissioner prior to the modification. If the Commissioner does not disapprove within 90 days after the filing, such modification shall be deemed to be approved. A request for expansion of service area is a modification subject to the terms of this section."

Sec. 7. G.S. 57B-3(c)(9) is amended by rewriting the second sentence to read:

"The three-year projection shall be prepared by the applicant's staff actuary or by a recognized actuarial consultant;"

Sec. 8. G.S. 57B-4(b) is amended in the second line by substituting "shall" for "may".

Sec. 9. G.S. 57B-8 is amended by adding the following subsection:

"(e) Effective on January 1, 1989, every health maintenance organization shall provide at least minimum cost and utilization information for group contracts of 100 or more subscribers on an annual basis when requested by the group. Such information shall be compiled in accordance with the Data Collection Form developed by the Standardized HMO Data Form Task Force as endorsed by the Washington Business Group on Health and the Group Health Association of American on November 19, 1986, and any subsequent amendments."

Sec. 10. General Statute Chapter 57B is amended by adding the following section:

"§ 57B-4.3. *Management and exclusive contracts.*--(a) No health maintenance organization shall enter into an exclusive agency contract or management contract unless the contract is first filed with the Commissioner and approved under this section within 45 days after filing or such reasonable extended period as the Commissioner shall specify by notice that is given within the 45 day period.

(b) The Commissioner shall disapprove a contract submitted under subsection (a) of this section if he finds that:

- (1) it subjects the health maintenance organization to excessive charges;
- (2) the contract extends for an unreasonable period of time;
- (3) the contract does not contain fair and adequate standards of performance;
- (4) the persons empowered under the contract to manage the health maintenance organization are not sufficiently trustworthy, competent, experienced, and free from conflict of interest to manage the health maintenance organization with due regard for the interests of its enrollees, creditors,

or the public; or

- (5) the contract contains provisions that impair the interests of the organization's enrollees, creditors, or the public."

Sec. 11. This act is effective upon ratification; provided that Section 3 of this act shall apply only to health maintenance organizations licensed after the effective date of this act.

In the General Assembly read three times and ratified this the 17th day of July, 1987.

H.B. 823

CHAPTER 632

AN ACT TO REQUIRE CERTAIN INFORMATION BE USED IN DETERMINING FIRE INSURANCE RATES FOR HOMEOWNERS AND FARMOWNERS INSURANCE IN RURAL FIRE DISTRICTS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 58-124.19(3) is amended by adding the following sentence:

"In the case of fire insurance rates that are subject to the ratemaking authority of the Bureau, consideration shall be given to the insurance public protection classifications of rural fire districts based upon standards established by the Commissioner."

Sec. 2. On or before October 1, 1988, the North Carolina Rate Bureau shall file rating or statistical plans to comply with this act.

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 17th day of July, 1987.

S.B. 48

CHAPTER 633

AN ACT TO PROHIBIT SHALLOW LAND BURIAL OF LOW-LEVEL RADIOACTIVE WASTE, TO REQUIRE THE USE OF ENGINEERED BARRIERS IN CONNECTION WITH THE DISPOSAL OF LOW-LEVEL RADIOACTIVE WASTE, TO ESTABLISH REQUIREMENTS FOR ENGINEERED BARRIERS AND OTHER REQUIREMENTS APPLICABLE TO THE DISPOSAL OF LOW-LEVEL RADIOACTIVE WASTE, AND TO AMEND CERTAIN DEFINITIONS IN THE RADIATION PROTECTION ACT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 104E-5 is amended by adding two new subdivisions to read:

"(7a) 'Engineered barrier' means a man-made structure or device that is intended to improve a disposal facility's ability to meet (i) the performance objectives of Subpart C, Title 10, Code of Federal Regulations Part 61 in effect on 1 January 1987, (ii) other requirements set out in G.S. 104E-25, and (iii) requirements of rules adopted by the Commission under this Chapter.

(14a) 'Shallow land burial' means disposal of low-level radioactive waste in subsurface trenches without the additional confinement of the waste as described in G.S.104E-25."

Sec. 2. G.S. 104E-5(9a) is rewritten to read:

"(9a) 'Low-level radioactive waste' means low-level radioactive waste as defined in the Low-Level Radioactive Waste Policy Amendments Act of 1985, Pub. L. 99-240, 99 Stat. 1842, 42 U.S.C. 2021b *et seq.* and other waste, including waste containing naturally occurring and accelerator produced radioactive material, which is not regulated by the United States Nuclear Regulatory Commission or other agency of the federal government and which is determined to be low-level radioactive waste by the North Carolina Radiation Protection Commission."

Sec. 3. G.S.104E-5(9b) is rewritten to read:

"(9b) 'Low-level radioactive waste facility' means a facility for the storage, collection, processing, treatment, recycling, recovery, or disposal of low-level radioactive waste."

Sec. 4. G.S. 104E-5(9c) is rewritten to read:

"(9c) 'Low-level radioactive waste disposal facility' means any low-level radioactive waste facility or any portion of such facility, including land, buildings, and equipment, which is used or intended to be used for the disposal of low-level radioactive waste on or in land in accordance with rules promulgated under this Chapter."

Sec. 5. G.S. 104E-6.1 is amended by substituting the word "disposal" for the word "landfill" in the title and in the first sentence of subsection (a).

Sec. 6. G.S. 104E-6.2(a) is amended by substituting the word "disposal" for the word "landfill" in the first sentence.

Sec. 7. G.S. 104E-9(8) is amended by substituting the word "disposal" for the word "landfill".

Sec. 8. G.S. 104E-16(b) is amended by substituting the words "disposal facilities" for the word "landfills" in the first sentence, and by substituting the word "disposal" for the word "landfill" in the second sentence.

Sec. 9. G.S. 104E-19(b) is amended by substituting the word "disposal" for the word "landfill" in the first sentence.

Sec. 10. G.S. 104E-20 is amended by rewriting the catch line to read:

"Prohibited uses and facilities."; and is further amended by designating the existing paragraph as subsection (a) and adding a new subsection (b) to read:

"(b) Shallow land burial is prohibited."

Sec. 11. Chapter 104E of the General Statutes is amended by adding a new section to read:

"§ 104E-25. *Performance objectives, technical requirements and design criteria applicable to low-level radioactive waste disposal facilities; engineered barriers.*--(a) As used in this section, the term 'Part 61' means Title 10, Code of Federal Regulations Part 61 in effect on 1 January 1987. Unless a different meaning is required by definitions generally applicable to this Chapter or by the context, terms defined or used in Part 61 shall have the same meaning in this section as in Part 61.

(b) The Commission shall adopt rules for low-level radioactive waste disposal facilities which incorporate and are consistent with the performance objectives and technical requirements set out in Subparts C and D of Part 61. In the event that Part 61 is amended, the Commission shall amend its rules at least to the extent necessary to maintain the State's status as an agreement state. The Commission may adopt rules which exceed the requirements of applicable federal statutes and regulations.

(c) Low-level radioactive waste disposal facilities shall incorporate engineered barriers for all waste classifications. The Commission shall specify minimum design criteria for engineered barriers. Different engineered barrier design criteria may be specified for different waste classifications. In the event that a single disposal unit is used for the disposal of wastes having more than one waste classification, the engineered barrier employed shall be that specified for the highest waste classification in the disposal unit.

(d) Engineered barriers shall be designed and constructed to complement and, where appropriate, improve the ability of the disposal facility to meet the performance objectives of this section. The site for a low-level radioactive waste disposal facility shall meet all hydrogeological and other criteria and standards applicable to disposal site suitability as though engineered barriers were not required. Engineered barriers shall not substitute for a suitable site or compensate for any deficiency in a site.

(e) Engineered barriers shall be designed and constructed of materials having physical and chemical properties so as to provide reasonable assurance that the barriers will maintain their functional integrity under all reasonably foreseeable conditions for at least the institutional control period. To the maximum extent possible, engineered barriers shall be chemically nonreactive with waste, waste containers and surrounding soil. Engineered barriers shall not detract from the ability of the disposal facility to meet the performance objectives adopted by the Commission under this Chapter. The Commission shall determine the appropriate design life of engineered barriers, which may exceed the institutional control period; however no reliance may be placed on engineered barriers beyond the end of the institutional control period.

(f) Disposal units and the incorporated engineered barriers shall be designed and constructed to meet the following objectives:

- (1) Prevention of the migration of water into the disposal unit.
- (2) Prevention of the migration of waste or waste contaminated water out of the disposal unit.
- (3) Detection of water and other fluids in the disposal unit.
- (4) Temporary collection and retention of water and other liquids for a time sufficient to allow for their detection and removal or other remedial measures without contamination of groundwater or surrounding soil.
- (5) Facilitation of remedial measures without disturbing other disposal units.
- (6) Facilitation of recovery of waste, other than Class A waste, in the packing or container in which the waste was placed for disposal.
- (7) Reasonable assurance that waste will be isolated for at least the institutional control period.
- (8) Prevention of contact between waste and the surrounding earth, except for earth that may be used as fill within the disposal unit.

(g) The term 'container' means any portable device into which waste is placed for storage, transportation, treatment, disposal, or other handling and includes the first enclosure which encompasses the waste. All waste shall be packed in containers for disposal. The Commission shall adopt standards for the design and construction of containers for disposal which are consistent with applicable federal standards. Standards for containers may vary for different types and classifications of waste. The standards for disposal containers may supplement or duplicate any of the requirements for engineered barriers set out in this section; however the requirements for engineered barriers are separate and cumulative, and engineered

barriers and containers may not substitute for or replace one another.

(h) Waste shall be converted into a form for disposal which is as chemically stable, nonreactive, and physically stable as can be reasonably achieved, as determined by the Commission, taking into consideration costs and available technology. All liquid waste shall be solidified prior to disposal.

(i) In adopting rules specifying performance objectives, technical requirements, and design criteria and standards for a low-level radioactive waste disposal facility, the Commission shall consider the possibility of unforeseen differences between expected and actual performance of the facility. The Commission shall consider best available technology and costs.

(j) The Commission shall require that the bottom of a low-level radioactive waste disposal facility shall be at least seven feet above the seasonal high water table. The Commission shall require additional separation wherever necessary to adequately protect the public health and the environment."

Sec. 12. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 17th day of July, 1987.

S.B. 288

CHAPTER 634

AN ACT TO ALLOW THE SECRETARY OF THE DEPARTMENT OF HUMAN RESOURCES TO PROVIDE ASSISTANCE TO PRIVATE NONPROFIT FOUNDATIONS.

The General Assembly of North Carolina enacts:

Section 1. Chapter 143B is amended by adding a new section to read:

"§ 143B-139.4. *Department of Human Resources; authority to assist private nonprofit foundations.*--The Secretary of the Department of Human Resources may allow employees of the Department or provide other appropriate services to assist any private nonprofit foundation which works directly with services or programs of the Department and whose sole purpose is to support the services and programs of the Department. A Department employee shall be allowed to work with a foundation no more than twenty hours in any one month. These services are not subject to the provisions of Chapter 150B of the General Statutes.

The board of directors of each private, nonprofit foundation shall secure and pay for the services of the State Auditor's Office or employ a certified public accountant to conduct an annual audit of the financial accounts of the foundation. The board of directors shall

transmit to the Secretary of the Department a copy of the annual financial audit report of the private nonprofit foundation."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 17th day of July, 1987.

S.B. 631

CHAPTER 635

AN ACT TO LOWER THE LIABILITY INSURANCE AND
INSPECTION REQUIREMENTS FOR CERTAIN AMUSEMENT
DEVICES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 95-111.12(a) reads as rewritten:

"(a) No owner shall operate a device subject to the provisions of this Article, unless at the time, there is in existence a contract of insurance providing coverage of not less than one million dollars (\$1,000,000) per occurrence against liability for injury to persons or property arising out of the operation or use of such device or there is in existence a contract of insurance providing coverage of not less than five hundred thousand dollars (\$500,000) per occurrence against liability for injury to persons or property arising out of the operation or use of the amusement devices if the annual gross volume of the devices does not exceed two hundred seventy-five thousand dollars (\$275,000); provided waterslides shall not be required to be insured as herein provided for an amount in excess of three hundred thousand dollars (\$300,000) per occurrence. The insurance contract ~~shall to be provided must be~~ by any insurer or surety that is acceptable to the North Carolina Insurance Commissioner and ~~licensed~~ authorized to transact business in this State."

Sec. 2. G.S. 95-111.4(5) reads as rewritten:

"(5) To inspect and have tested for acceptance all new and relocated devices subject to the provisions of this Article. Relocated amusement devices shall be inspected upon reassembly at each new location within this State; provided that the Commissioner may provide for less frequent inspections when he determines that the device is of such a type and its use is of such a nature that inspection less often than upon each reassembly would not expose the public to an unsafe condition likely to result in serious personal injury or property damage;".

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 17th day of July, 1987.

S.B. 709

CHAPTER 636

AN ACT MAKING IT ILLEGAL TO HARASS PEOPLE TAKING WILDLIFE OR FISHERIES RESOURCES.

The General Assembly of North Carolina enacts:

Section 1. Chapter 113 of the General Statutes is amended by adding a new section to read:

"§ 113-267. *Robbing or injuring nets, seines, buoys, pots, etc.--*(a) It is unlawful for any person without the authority of the owner of the equipment to take fish from nets, traps, pots, and other devices to catch fish which have been lawfully placed in the open waters of the State.

(b) It is unlawful for any master or other person having the management or control of a vessel in the navigable waters of the State to willfully, wantonly, and unnecessarily do injury to any seine, net or pot which may lawfully be hauled, set, or fixed in such waters for the purpose of taking fish except that a net set across a channel may be temporarily moved to accommodate persons engaged in drift netting, provided that no fish are removed and no damage is done to the net moved.

(c) It is unlawful for any person to willfully destroy or injure any buoys, markers, stakes, nets, pots, or other devices on property lawfully set out in the open waters of the State in connection with any fishing or fishery.

(d) Violation of subsections (a), (b), or (c) is a misdemeanor punishable for a first conviction by a fine not to exceed two hundred dollars (\$200.00), by imprisonment not to exceed three months, or by both and punishable for a second or subsequent conviction by a fine not to exceed five hundred dollars (\$500.00), by imprisonment not to exceed one year, or by both.

(e) The Department may, either before or after the institution of any other action or proceeding authorized by this section, institute a civil action for injunctive relief to restrain a violation or threatened violation of subsections (a), (b), or (c) of this section pursuant to G.S. 113-131. The action shall be brought in the superior court of the county in which the violation or threatened violation is occurring or about to occur and shall be in the name of the State upon the relation of the Secretary of Natural Resources and Community Development. The court, in issuing any final order in any action brought pursuant to this subsection may, in its discretion, award costs of litigation including reasonable attorney and expert-witness fees to any party."

Sec. 2. G.S. 113-265 is amended by deleting from the catch line the words "; robbing or injuring nets, seines, buoys, etc." and by the repeal of paragraphs (c), (d), and (e).

Sec. 3. Chapter 113 of the General Statutes is amended by adding a new section to read:

"§ 113-295. *Unlawful harassment of persons taking wildlife resources.*--(a) It is unlawful for a person to interfere intentionally with the lawful taking of wildlife resources or to drive, harass, or intentionally disturb any wildlife resources for the purpose of disrupting the lawful taking of wildlife resources. It is unlawful to take or abuse property, equipment, or hunting dogs that are being used for the lawful taking of wildlife resources. This subsection does not apply to a person who incidentally interferes with the taking of wildlife resources while using the land for other lawful activity such as agriculture, mining, or recreation. This subsection also does not apply to activity by a person on land he owns or leases.

Violation of this subsection is a misdemeanor punishable for a first conviction by a fine not to exceed two hundred dollars (\$200.00), by imprisonment not to exceed three months, or by both and punishable for a second or subsequent conviction by a fine not to exceed five hundred dollars (\$500.00), by imprisonment not to exceed one year, or by both.

(b) The Wildlife Resources Commission may, either before or after the institution of any other action or proceeding authorized by this section, institute a civil action for injunctive relief to restrain a violation or threatened violation of subsection (a) of this section pursuant to G.S. 113-131. The action shall be brought in the superior court of the county in which the violation or threatened violation is occurring or about to occur and shall be in the name of the State upon the relation of the Wildlife Resources Commission. The court, in issuing any final order in any action brought pursuant to this subsection may, in its discretion, award costs of litigation including reasonable attorney and expert-witness fees to any party."

Sec. 4. This act shall become effective October 1, 1987.

In the General Assembly read three times and ratified this the 17th day of July, 1987.

S.B. 752

CHAPTER 637

AN ACT TO PROVIDE THAT FOREIGN SALES CORPORATIONS SHALL BE EXEMPT FROM STATE INCOME TAX TO THE SAME EXTENT AS THEY ARE EXEMPT FROM FEDERAL INCOME TAX.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-130.5 is amended by adding a new subsection at the end to read:

"(f) The exempt foreign trade income, as defined in Section 923 of the Code, of a foreign sales corporation shall not be included in the net income of the foreign sales corporation under this Division. Any expenses and commissions paid by a shareholder to a foreign sales corporation that are deductible under the Code shall be deductible from the shareholder's income under this Article. As used in this section, the term 'foreign sales corporation' means a corporation that qualifies as a foreign sales corporation under the provisions of Subchapter N of Chapter 1 of the Code and has in effect for the entire taxable year a valid election under the Code to be treated as a foreign sales corporation."

Sec. 2. The Department of Revenue shall report to the General Assembly on or before May 1 of each year the estimated revenue loss for that year attributable to the exemption of part of the foreign trade income of foreign sales corporations, as provided in G.S. 105-130.5(f).

Sec. 3. This act shall become effective January 1, 1988, and applies to taxable years beginning on or after that date. This act shall expire December 30, 1991.

In the General Assembly read three times and ratified this the 17th day of July, 1987.

S.B. 585

CHAPTER 638

AN ACT TO MAKE CERTAIN CHANGES IN MENTAL HEALTH, MENTAL RETARDATION, AND SUBSTANCE CONFIDENTIALITY LAWS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 122C-54 is amended by adding a new subsection (a1) to read as follows:

"(a1) Upon a determination by the facility director or his designee that disclosure is in the best interests of the client, a facility may disclose confidential information for purposes of filing a petition for involuntary commitment of a client pursuant to Article 5 of this Chapter or for purposes of filing a petition for the adjudication of incompetency of the client and the appointment of a guardian or an interim guardian under Chapter 33 or 35 of the General Statutes."

Sec. 2. The first sentence of G.S. 122C-55(a) is rewritten to read as follows:

"Any area or State facility or the psychiatric service of North Carolina Memorial Hospital may share confidential information regarding any client of that facility with any other area or State facility or the psychiatric service of North Carolina Memorial Hospital upon a written determination by the responsible professional that such disclosure is necessary to coordinate appropriate and effective care, treatment or habilitation of the client and that failure to share this information would be detrimental to the care, treatment or habilitation of the client; provided however, confidential information may be shared without a written determination either between State facilities or between area facilities within the same catchment area."

Sec. 3. G.S. 122C-55 is amended by adding a new subsection (a1) to read as follows:

"(a1) Any State or area facility or the psychiatric service of North Carolina Memorial Hospital may share confidential information regarding any client of that facility with the Secretary, and the Secretary may share confidential information regarding any client with an area or State facility or the psychiatric service of North Carolina Memorial Hospital when the responsible professional or the Secretary determines that disclosure is necessary to coordinate appropriate and effective care, treatment or habilitation of the client and that failure to share this information would be detrimental to the care, treatment or habilitation of the client. Under the circumstances described in this subsection, the consent of the client or legally responsible person is not required for this information to be furnished, and the information may be furnished despite objection by the client."

Sec. 3.1. Effective October 1, 1987, G.S. 122C-54(a1) as enacted by Section 1 of this act is amended by deleting "Chapter 33 or 35", and substituting "Chapter 35A".

Sec. 4. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 20th day of July, 1987.

S.B. 817

CHAPTER 639

AN ACT TO ALLOW THE SECRETARY OF CORRECTION TO ADOPT RULES ON DAMAGE OR THEFT OF PERSONAL PROPERTY BELONGING TO EMPLOYEES IN INSTITUTIONS OF THE DEPARTMENT OF CORRECTION.

The General Assembly of North Carolina enacts:

Section 1. Chapter 143B of the General Statutes is amended by adding a new section to read:

"§ 143B-261.2. *Repair or replacement of personal property.*--(a) The Secretary of Correction may adopt rules governing repair or replacement of personal property items excluding private passenger vehicles that belong to employees of State facilities within the Department of Correction and that are damaged or stolen by inmates of the State facilities provided that the item is determined by the Secretary to be damaged or stolen on or off facility grounds during the performance of employment and necessary for the employee to have in his possession to perform his assigned duty.

(b) Reimbursement for items damaged or stolen shall not be granted in instances in which the employee is determined to be negligent or otherwise at fault for the damage or loss of the property. Negligence shall be determined by the superintendent of the facility.

(c) The superintendent of the facility shall determine if the person seeking reimbursement has made a good faith effort to recover the loss from all other non-State sources and has failed before reimbursement is granted.

(d) Reimbursement shall be limited to the amount specified in the rules and shall not exceed a maximum of two hundred dollars (\$200.00) per incident. No employee shall receive more than five hundred dollars (\$500.00) per year in reimbursement. Reimbursement is subject to the availability of funds.

(e) The Secretary of Correction shall establish by rule an appeals process consistent with Chapter 150B of the General Statutes."

Sec. 2. The Secretary of Correction shall submit a report to the Joint Legislative Commission on Governmental Operations by December 1, 1988, on the implementation of this law. The report shall include all the reported incidents, the total amount of funds expended, the amount expended per incident and the types of property damaged or stolen for which reimbursement was granted. This report shall also include incidents related to private passenger vehicles.

Sec. 3. This act is effective upon ratification, and shall apply only to acts occurring after that date. This act shall expire July 1, 1989.

In the General Assembly read three times and ratified this the 20th day of July, 1987.

S.B. 829

CHAPTER 640

AN ACT TO CREATE THE OFFENSE OF "TRAFFICKING IN
LYSERGIC ACID DIETHYLAMIDE" AND TO CLARIFY THE
PENALTY FOR DRUG TRAFFICKING.

The General Assembly of North Carolina enacts:

Section 1. G.S. 90-95(h)(5), as amended by Chapter 90 of the 1987 Session Laws, reads as rewritten:

"(5) Except as provided in this subdivision, a person being sentenced under this subsection may not receive a suspended sentence or be placed on probation. A person sentenced under this subsection as a committed youthful offender shall be eligible for release or parole no earlier than that person would have been had he been sentenced under this subsection as a regular offender. The sentencing judge may reduce the fine, or impose a prison term less than the applicable minimum prison term provided by this subsection, or suspend the prison term imposed and place a person on probation when such person has, to the best of his knowledge, provided substantial assistance in the identification, arrest, or conviction of any accomplices, accessories, co-conspirators, or principals if the sentencing judge enters in the record a finding that the person to be sentenced has rendered such substantial assistance."

Sec. 2. G.S. 90-95(h) is amended by adding a new subdivision to read:

"(4A) Any person who sells, manufactures, delivers, transports, or possesses 100 tablets, capsules, or other dosage units, or the equivalent quantity, or more, of Lysergic Acid Diethylamide, or any mixture containing such substance, shall be guilty of a felony, which felony shall be known as 'trafficking in Lysergic Acid Diethylamide'. If the quantity of such substance or mixture involved:

- a. Is 100 or more dosage units, or equivalent quantity, but less than 500 dosage units, or equivalent quantity, such person shall be punished as a Class G felon and shall be sentenced to a term of at least seven years in the State's prison and shall be fined not less than twenty-five thousand dollars (\$25,000);
- b. Is 500 or more dosage units, or equivalent quantity, but less than 1,000 dosage units, or equivalent quantity, such person shall be punished as a Class F felon and shall be sentenced to a term of at least 14 years in the State's prison and shall be fined not less than fifty thousand dollars (\$50,000);
- c. Is 1,000 or more dosage units, or equivalent quantity, such person shall be punished as a Class D felon and shall be sentenced to a term of at least 35 years in the State's prison and shall be fined not less than two hundred thousand dollars (\$200,000)."

Sec. 3. Section 1 of this act is effective upon ratification. Section 2 of this act shall become effective October 1, 1987, and applies to offenses occurring on and after that date.

In the General Assembly read three times and ratified this the 20th day of July, 1987.

S.B. 870

CHAPTER 641

AN ACT TO REORGANIZE THE MARINE FISHERIES COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. Part 5 of Article 7 of Chapter 143B of the General Statutes of North Carolina is repealed effective September 30, 1987. The terms of all members of the Marine Fisheries Commission appointed pursuant to G.S. 143B-287 shall expire at that time.

Sec. 2. Article 7 of Chapter 143B of the General Statutes of North Carolina is amended by the addition of a new Part to read:

"Part 5A. Marine Fisheries Commission

" § 143B-289.1. *Title.*--This Part shall be known and may be cited as the North Carolina Marine Fisheries Act of 1987.

" § 143B-289.2. *Definitions.*--(a) As used in this Part:

- (1) 'Commission' means the North Carolina Marine Fisheries Commission.
- (2) 'Department' means the North Carolina Department of Natural Resources and Community Development.
- (3) 'Fisheries Director' means the Director of the North Carolina Division of Marine Fisheries of the Department of Natural Resources and Community Development.
- (4) 'Secretary' means the Secretary of Natural Resources and Community Development.

(b) The terms used in this Part shall have the same meaning as terms defined in G.S. 113-129.

" § 143B-289.3. *Marine Fisheries Commission - creation: purpose and transfer of function.*--(a) There is hereby created the Marine Fisheries Commission of the Department of Natural Resources and Community Development.

(b) The function, purpose, and duty of the Marine Fisheries Commission shall be:

- (1) to manage, restore, develop, cultivate, conserve, protect, and regulate the marine and estuarine resources of the State of North Carolina;
- (2) to implement the laws, relating to coastal fisheries, coastal fishing, shellfish, and crustaceans, and other marine and estuarine resources enacted by the General Assembly,

through the promulgation of rules and policies, to the end that there may be provided a sound, constructive, comprehensive, continuing, and economical coastal fisheries program directed by citizens, who shall have knowledge of or training in the protection, restoration, proper use and management of marine and estuarine resources; and

- (3) to advise the State regarding ocean and marine fisheries within the jurisdiction of the Atlantic States Marine Fisheries Compact, the South Atlantic Fishery Management Council, and other similar organizations established to manage or regulate fishing in the Atlantic Ocean.

The powers and duties of the Marine Fisheries Commission established under G.S. 143B-286 are transferred to the Marine Fisheries Commission created by this Part.

(c) All decisions heretofore made by the Marine Fisheries Commission, appointed pursuant to G.S. 143B-287, shall remain in full force and effect unless repealed or suspended by action of the Marine Fisheries Commission established in the North Carolina Marine Fisheries Act of 1987. All rules and regulations heretofore adopted pursuant to the provisions of the Administrative Procedures Act of the General Statutes by the Marine Fisheries Commission, appointed pursuant to G.S. 143B-287, shall remain in full force and effect until repealed or amended by action of the Marine Fisheries Commission established herein.

" § 143B-289.4. Marine Fisheries Commission - powers and duties.-- The Marine Fisheries Commission shall have the power and duty to adopt rules and regulations to be followed in the management, protection, preservation, and enhancement of the marine and estuarine resources of the State including commercial and sports fisheries resources.

(1) The Marine Fisheries Commission shall have the following powers and duties:

- (a) To authorize, license, regulate, prohibit, prescribe, or restrict all forms of marine and estuarine resources in coastal fishing waters with respect to:
 - (1) Time, place, character, or dimensions of any methods or equipment that may be employed in taking fish;
 - (2) Seasons for taking fish;
 - (3) Size limits on and maximum quantities of fish that may be taken, possessed, bailed to another, transported, bought, sold, or given away.

- (b) To adopt regulations and take all steps necessary to develop and improve aquaculture, including the cultivation, harvesting, and marketing of shellfish and other marine resources, in North Carolina involving the use of public grounds and private beds as provided in G.S. 113-201;
 - (c) To close areas of public bottoms under coastal fishing waters for such time as may be necessary in any program of propagation of shellfish as provided in G.S. 113-204;
 - (d) In the interest of conservation of the marine and estuarine resources of North Carolina, to institute an action in the superior court to contest the claim of title or claimed right of fishery in any navigable waters of North Carolina registered with the Department as provided in G.S. 113-206(d);
 - (e) To delegate to the Fisheries Director the authority by proclamation to suspend or implement, in whole or in part, particular regulations of the Commission which may be affected by variable conditions as provided in G.S. 113-221(e);
 - (f) To make reciprocal agreements with other jurisdictions respecting any of the matters governed in this Subchapter as provided by G.S. 113-223;
 - (g) To adopt relevant provisions of federal laws and regulations as State regulations pursuant to G.S. 113-228; and
 - (h) To comment on and otherwise participate in the determination of permit applications received by State agencies which may have an effect on the marine and estuarine resources of the State.
- (2) The Marine Fisheries Commission shall have the power and duty to establish standards and adopt rules and regulations:
- (a) Implementing the provisions of Subchapter IV of Chapter 113 as provided in G.S. 113-134 of the General Statutes of the State of North Carolina;
 - (b) For the disposition of confiscated property as set forth in G.S. 113-137;
 - (c) Governing all license requirements and taxes prescribed in Chapter 113, Article 14;
 - (d) Governing the importation and exportation of fish, and equipment that may be used in taking or processing fish, as necessary to enhance the conservation of marine and estuarine resources of North Carolina as provided in G.S. 113-160;

- (e) Governing the possession, transportation and disposition of seafood, as provided in G.S. 113-164;
 - (f) Regarding the disposition of the young of edible fish, as provided by G.S. 113-185;
 - (g) Regarding the leasing of public grounds for aquaculture, including oysters and clam production, as provided in G.S. 113-202;
 - (h) Governing utilization of private fisheries, as provided in G.S. 113-205;
 - (i) Imposing further restrictions upon the throwing of fish offal in any coastal fishing waters, as provided in G.S. 113-265;
 - (j) Governing the location and utilization of artificial reefs in coastal waters; and
 - (k) Regulating the placement of nets and other sports or commercial fishing apparatus in coastal fishing waters with regard to navigational recreational safety as well as from a conservation standpoint.
- (3) The Commission is authorized to authorize, license, prohibit, prescribe, or restrict:
- (a) The opening and closing of coastal fishing waters, except as to inland game fish, whether entirely or only as to the taking of particular classes of fish, use of particular equipment, or as to other activities; and
 - (b) The possession, cultivation, transportation, importation, exportation, sale, purchase, acquisition, and disposition of all marine and estuarine resources and all related equipment, implements, vessels, and conveyances as necessary to carry out its duties.
- (4) The Commission is authorized and empowered to make such rules and regulations, not inconsistent with the laws of this State, as may be required by the federal government for grants-in-aid for coastal resource purposes which may be made available to the State by the federal government. This section is to be liberally construed in order that the State and its citizens may benefit from such grants-in-aid.
- (5) The Commission shall make rules and regulations consistent with the provisions of this Chapter. All rules and regulations adopted by the Commission shall be enforced by the Department of Natural Resources and Community Development.
- (6) As a quasi-judicial agency, the Commission, in accordance with Article IV, Section 3 of the Constitution, has such judicial powers as may be reasonably necessary as an incident to the accomplishment of the purposes for which it was created.

"§ 143B-289.5. *Marine Fisheries Commission - members; selection; removal; compensation; quorum; services.*--(a) *Members. Selection.* The Marine Fisheries Commission shall consist of 15 members appointed by the Governor. The Governor shall select the members so that all the following interests are represented:

- (1) Four who shall at the time of appointment be actively connected with and have experience in commercial fishing, as demonstrated by deriving at least fifty percent (50%) of earned income from taking and selling food resources living in coastal fishing waters;
- (2) Four who shall at the time of appointment be actively connected with and have experience in sport fishing;
- (3) Three who shall at the time of appointment have special training and expertise in marine or estuarine sciences or the environment affecting the marine and estuarine resources;
- (4) Two who shall at the time of appointment be actively connected with and have experience in seafood processing and distribution as demonstrated by deriving at least fifty percent (50%) of earned income from activities involving processing and distributing seafood;
- (5) Two at large who shall at the time of appointment have knowledge of and experience related to the subjects and persons regulated by the Commission.

In making appointments to and filling vacancies upon the Commission, the Governor shall give due consideration to securing appropriate representation of women and minorities.

(b) *Terms.* Members shall serve staggered terms of office of six years. Commission members may continue to serve until their successors have been appointed. Each member of the Commission, before assuming the duties of his office, shall take an oath for the faithful performance of his duties.

(c) *Vacancies.* Vacancies on the Commission occurring for any reason shall be filled by the Governor. Any appointment to fill a vacancy on the Commission created by the resignation, dismissal, death or disability of a member shall be for the balance of the unexpired term.

(d) *Removal.* Commission members may be removed by the Governor for misconduct, incompetence, or neglect of duty. Regular attendance at Commission meetings is a duty of each member. The Commission shall develop procedures for declaring any seat on the Commission to be vacant upon failure by a member to perform his duty.

(e) Residential Qualifications. In appointing four members of the Commission pursuant to G.S. 143B-289.5(a)(1), the Governor shall cause at least one resident of each of the following areas to be appointed: (1) Bertie, Camden, Chowan, Currituck, Dare, Gates, Halifax, Hertford, Martin, Northampton, Pasquotank, Perquimans, Tyrrell and Washington Counties; (2) Beaufort, Hyde and Pamlico Counties; (3) Carteret, Craven and Jones Counties; (4) Bladen, Brunswick, Columbus, New Hanover, Onslow and Pender Counties. Persons appointed to the Commission seats created pursuant to G.S. 143B-289.5(a)(4) shall be residents of one of the counties listed above. No more than three members appointed by the Governor may reside in any of the areas defined above.

(f) Office May Be Held Concurrently With Others. Membership on the Marine Fisheries Commission is hereby declared to be an office that may be held concurrently with other elective or appointive offices permitted to be held by one person under G.S. 128-1.1.

(g) Compensation. Members of the Commission who are State officers or employees shall receive no per diem compensation for serving on the Commission, but shall be reimbursed for their expenses in accordance with G.S. 138-6. Members of the Commission who are full-time salaried public officers or employees other than State officers or employees shall receive no per diem compensation for serving on the Commission, but shall be reimbursed for their expenses in accordance with G.S. 138-6 in the same manner as State officers or employees. All other Commission members shall receive per diem compensation and reimbursement in accordance with the compensation rate established in G.S. 93B-5.

(h) Quorum. A majority of the Commission of the duly appointed members shall constitute a quorum for the transaction of business. No vacancy in the membership of the Commission shall impair the rights of a quorum to exercise all the rights and to perform all the duties of the Commission.

(i) Staff. All clerical and other services required by the Commission shall be supplied by the Fisheries Director and the Department of Natural Resources and Community Development.

(j) Legal Services. The Attorney General shall act as attorney for the Commission and shall initiate actions in the name of, and at the request of, the Commission, and shall represent the Commission in the hearing of any appeal from or other review of any order of the Commission.

" § 143B-289.6. *Marine Fisheries Commission - organization; selection of officers; Robert's Rules of Order.*--(a) The Marine Fisheries Commission shall have a chairman and a vice-chairman. The chairman shall be designated by the Governor from among the members of the Commission to serve at the pleasure of the Governor.

At the first scheduled meeting of the Commission after October 1, 1987, and on July 1 of each odd-numbered year thereafter, the Commission shall select from among its membership a vice-chairman who shall serve for a term of two years or until his successor is elected and qualified.

(b) The chairman shall guide and coordinate the official actions and official activities of the Commission in fulfilling its program responsibility for setting the statewide policy of the Commission. The chairman shall report to and advise the Governor and the Secretary on the official actions and work of the Commission and on all marine and estuarine conservation and ocean fishery matters that affect the interest of the people of the State.

(c) The Commission shall determine its own organization and methods of procedure in accordance with the provisions of this Article, and shall have an official seal, which shall be judicially noticed.

(d) Meetings of the Commission shall be conducted pursuant to the bylaws of the Commission or Robert's Rules of Order when the bylaws do not provide necessary procedures.

" § 143B-289.7. *Marine Fisheries Commission - meetings.*--The Marine Fisheries Commission shall meet at least once in each quarter and may hold special meetings at any time and place within the State at the call of the chairman or upon the written request of at least five members. At least three of the four quarterly meetings of the Marine Fisheries Commissions shall be held in the coastal area as that area is defined in G.S. 113A-103.

" § 143B-289.8. *Marine Fisheries Endowment Fund.*--(a) Recognizing the inestimable importance to the State and its people of conserving the marine and estuarine resources of North Carolina, and for the purpose of providing the opportunity for citizens and residents of the State to invest in the future of its marine and estuarine resources, there is created the North Carolina Marine Fisheries Endowment Fund, the income and principal of which shall be used only for the purpose of supporting marine and estuarine resource conservation programs of the State in accordance with this section.

(b) There is created the Board of Trustees of the Marine Fisheries Endowment Fund of the Marine Fisheries Commission, with full authority over the administration of the Marine Fisheries Endowment Fund, whose ex officio chairman, vice-chairman, and members shall be the chairman, vice-chairman, and members of the Marine Fisheries Commission. The State Treasurer shall be the custodian of

the Marine Fisheries Endowment Fund and shall invest its assets in accordance with the provisions of G.S. 147-69.2 and G.S. 147-69.3.

(c) The assets of the Marine Fisheries Endowment Fund shall be derived from the following:

- (1) The proceeds of any gifts, grants and contributions to the State which are specifically designated for inclusion in the fund; and
- (2) Such other sources as may be specified by law.

(d) The Marine Fisheries Endowment Fund is declared to constitute a special trust derived from a contractual relationship between the State and the members of the public whose investments contribute to the fund. In recognition of such special trust, the following limitations and restrictions are placed on expenditures from the funds.

- (1) Any limitations or restrictions specified by the donors on the uses of the income derived from the gifts, grants and voluntary contributions shall be respected but shall not be binding.
- (2) No expenditure or disbursement shall be made from the principal of the Marine Fisheries Endowment Fund except as otherwise provided by law.
- (3) The income received and accruing from the investments of the Marine Fisheries Endowment Fund must be spent only in furthering the conservation of marine and estuarine resources.

(e) The Board of Trustees of the Marine Fisheries Endowment Fund may accumulate the investment income of the fund until the income, in the sole judgment of the trustees, can provide a significant supplement to the budget for the conservation and management of marine and estuarine resources. After that time the trustees, in their sole discretion and authority, may direct expenditures from the income of the fund for the purposes set out in subdivision (3) subsection (d) above.

(f) Expenditure of the income derived from the Marine Fisheries Endowment Fund shall be made through the State budget accounts of the Marine Fisheries Commission in accordance with the provisions of the Executive Budget Act. The Marine Fisheries Endowment Fund is subject to the oversight of the State Auditor pursuant to G.S. 147-58.

(g) The Marine Fisheries Endowment Fund and the income therefrom shall not take the place of State appropriations, but any portion of the income of the Marine Fisheries Endowment Fund available for the purpose set out in subdivision (3) subsection (d) above shall be used to supplement other income of and appropriations

for the conservation and management of marine and estuarine resources to the end that the Commission may improve and increase its services and become more useful to a greater number of people.

(h) In the event of a future dissolution of the Marine Fisheries Commission, such State agency as shall succeed to its budgetary authority shall, ex officio, assume the trusteeship of the Marine Fisheries Endowment Fund and shall be bound by all the limitations and restrictions placed by this section on expenditures from the fund.

" § 143B-289.9. *Conservation Fund; Commission may accept gifts.*--

(a) The Marine Fisheries Commission is hereby authorized and empowered to accept gifts, donations or contributions from any sources, which funds shall be held in a separate account and used solely for the purposes of marine and estuarine conservation and management. Such funds shall be administered by the Marine Fisheries Commission and shall be used for marine and estuarine resources management, including education about the importance of conservation, in a manner consistent with marine and estuarine conservation management principles.

(b) The Marine Fisheries Commission is hereby authorized to issue and sell appropriate emblems by which to identify recipients thereof as contributors to a special marine and estuarine resources conservation fund which shall be made available to the Marine Fisheries Commission for conservation, protection, enhancement, preservation and perpetuation of marine and estuarine species which may be endangered or threatened with extinction and for education about these issues. The special conservation fund will be audited by the State Auditor. Emblems of different size, shape, type or design may be used to recognize contributions in different amounts, but no such emblem shall be issued for a contribution amounting in value to less than five dollars (\$5.00).

" § 143B-289.10. *Article subject to Chapter 113.*--Nothing in this Article shall be construed to affect the jurisdictional division between the North Carolina Marine Fisheries Commission and the North Carolina Wildlife Resources Commission contained in Subchapter IV of Chapter 113 of the General Statutes, or in any way to alter or abridge the powers and duties of the two agencies conferred in that Subchapter.

" § 143B-289.11. *Jurisdictional questions.*--In the event of any questions arising between the North Carolina Wildlife Resources Commission and the North Carolina Marine Fisheries Commission or between the Department of Natural Resources and Community Development and the North Carolina Marine Fisheries Commission as

to any duty or responsibility or authority imposed upon either of said bodies by law, or in case of any conflicting rules or regulations or administrative practices adopted by said bodies, such questions or matters shall be determined by the Governor of the State and his determination shall be binding on each of said bodies.

" § 143B-289.12. *Regulations of Department continued.*--All rules and regulations now in force with respect to marine and estuarine resources as herein defined, promulgated by the Department of Natural Resources and Community Development under Chapter 113 of the General Statutes of North Carolina, shall continue in full force and effect until altered, modified, amended, or rescinded by the Commission created under this Part, or repealed or modified by law."

Sec. 3. The initial appointments to the Marine Fisheries Commission shall be as follows: Five members to be appointed by the Governor shall serve initial terms of four years to expire on September 30, 1991, which five members shall include one member pursuant to G.S. 143B-289.5(a) (1), two members pursuant to G.S. 143B-289.5 (a) (3) and two members pursuant to G.S. 143B-289.5 (a) (2). An additional five members to be appointed by the Governor shall serve initial terms of two years to expire on September 30, 1989, which five members shall include three members pursuant to G.S. 143B-289.5(a) (1), two members pursuant to G.S. 143B-289.5 (a) (4). The remaining five members shall serve six-year terms.

Sec. 4. G.S. 113-128 is amended as follows:

(a) Deletion from "(3) Department." of the second sentence which reads "References to the Department include, when appropriate, the Marine Fisheries Commission.";

(b) "(5a)" is amended by substituting for the words "Part 5" the words "Part 5A".

(c) Addition of a new subsection to read:

"(4a) Fisheries Director. Director, North Carolina Division of Marine Fisheries of the Department of Natural Resources and Community Development who shall be qualified for the office by education or experience."

Sec. 5. The following statutes are amended by substituting for the word "Department" the words "Marine Fisheries Commission": G.S. 113-129 (10); 113-132(a) and (d); 113-134.1; 113-154(e); 113-155.1; 113-156.1(a) and (b); and 113-185(a).

Sec. 6. The following statutes are amended by substituting for the words "Department of Natural Resources and Community Development" the words "Marine Fisheries Commission": G.S. 113-

129(3); 113-156(e); 113-187(d); 113-203(a)(1); 113-315.2 and 113-315.5.

Sec. 7. G.S. 113-221 is amended by substituting for the word "Secretary" the words "Fisheries Director"; G.S. 113-221(e) is amended by substituting for the word "Department" the words "Fisheries Director"; and G.S. 113-221(e) is further amended by deleting from the eighth sentence in the first paragraph the words "or the person designated by the Secretary to issue proclamations".

Sec. 8. G.S. 113-134.1 is amended by deleting from the first sentence the words, "enforcement and".

Sec. 9. G.S. 113-254 is amended by substituting for the words "Secretary of Natural Resources and Community Development" the words "Fisheries Director of the Division of Marine Fisheries of the Department of Natural Resources and Community Development" and is further amended by rewriting the seventh sentence to read:

"The Fisheries Director of the Division of Marine Fisheries appointed pursuant to Article III as ex officio commissioner may delegate, from time to time, to any deputy or other subordinate of the Fisheries Director, the power to be present and participate, including voting, as his representative or substitute at any meeting of or hearing by or other proceedings of the Commission."

Sec. 10. G.S. 113-163 is amended in paragraph (a) by substituting for the first two words of the paragraph the words "The Marine Fisheries Commission" and is further amended in paragraph (c) by substituting for the words "required by the Department" the words "required by the Marine Fisheries Commission".

Sec. 11. G.S. 113-228 is amended in the second sentence after the words "Marine Fisheries Commission" by the addition of the following: "is exempt from any conflicting limitations in G.S. 150B-14 so that it".

Sec. 12. G.S. 77-13 is amended in the third sentence after the words "enforced by" by the addition of the words "marine fisheries inspectors, wildlife protectors, or".

Sec. 13. G.S. 77-14 is amended in the second sentence after the words "enforced by" by the addition of the words "marine fisheries inspectors, wildlife protectors, or".

Sec. 14. G.S. 113-131 is amended by designating the present statute as paragraph (a) and is further amended by adding a new paragraph to read:

"(b) The following powers are hereby granted to the Department and the Wildlife Resources Commission and may be delegated to the Fisheries Director and the Executive Director:

- (1) Comment on and object to permit applications submitted to State agencies which may affect the public trust resources in the land and water areas subject to their respective management duties so as to conserve and protect the public trust rights in such land and water areas;
- (2) Investigate alleged encroachments upon, usurpations of, or other actions in violation of the public trust rights of the people of the State; and
- (3) Initiate contested case proceedings under Chapter 150B for review of permit decisions by State agencies which will adversely affect the public trust rights of the people of the State or initiate civil actions to remove or restrain any unlawful or unauthorized encroachment upon, usurpation of, or any other violation of the public trust rights of the people of the State or legal rights of access to such public trust areas.

(c) Whenever there exists reasonable cause to believe that any person or other legal entity has unlawfully encroached upon, usurped, or otherwise violated the public trust rights of the people of the State or legal rights of access to such public trust areas, a civil action may be instituted by the responsible agency for injunctive relief to restrain the violation and for a mandatory preliminary injunction to restore the resources to an undisturbed condition. The action shall be brought in the superior court of the county in which the violation occurred. The institution of an action for injunctive relief under this section shall not relieve any party to such proceeding from any civil or criminal penalty otherwise prescribed for the violation.

(d) The Attorney General shall act as the attorney for the agencies and shall initiate actions in the name of and at the request of the Department or the Wildlife Resources Commission.

(e) In this section, the term 'public trust resources' means land and water areas, both public and private, subject to public trust rights as that term is defined in G.S. 1-45.1."

Sec. 15. G.S. 113-201.1 is amended by the addition of a new subparagraph to read:

"(5) 'Water column' means the vertical extent of water, including the surface thereof, above a designated area of submerged bottom land."

Sec. 16. G.S. 113-202 is amended by the addition of a new sentence to read:

"To the extent required by demonstration or research aquaculture development projects, the Marine Fisheries Commission may amend existing leases and issue leases that authorize use of the bottom and the water column, notwithstanding the factors enumerated in

subsection (a) of this section."

Sec. 17. G.S. 113-152 is amended as follows:

(1) The first sentence in the third paragraph of (a) is amended by substituting for the word "license" the words "licenses including vessel, gear, or other license required by the Commission";

(2) Paragraph (c) is amended by the addition of a new subsection (6) to read:

"(6) Vessels engaged in commercial fishing operations for which the Commission requires a gear or equipment license shall be subject to fees as prescribed in subsection (g)."

(3) The addition of a new paragraph (g) to read:

"Gear or equipment licenses shall be issued upon the payment of fees as prescribed by the Commission in its duly adopted regulations at a rate to be established by the Commission between twenty-five dollars (\$25.00) and five hundred dollars (\$500.00) per license. The fee rate for gear or equipment licenses, at a minimum, shall be adequate to compensate the Department for the actual and administrative cost associated with the conservation and management of the fishery. Gear or equipment licenses may be required for commercial fishing operations that do not involve the use of a vessel." and

(4) The title of G.S. 113-152 is amended to read: "Licensing of vessels, equipment and operations; fees."

Sec. 18. Subchapter IV of Chapter 113 of the General Statutes of North Carolina is amended by the addition of a new Article to be entitled "Article 19A. South Atlantic Fishery Management Council." and to read:

"Article 19A. South Atlantic Fishery Management Council.

"§ 113-259. *North Carolina members of the Council.*--(a) In pursuance of Section 302 of the Magnuson Fishery Conservation and Management Act, 16 United States Code § 1801 *et seq.*, there shall be at least two members of the South Atlantic Fishery Management Council from the State of North Carolina.

(b) The first Council member shall be the principal State official with marine fishery management responsibility and expertise in the State which official is the Fisheries Director of the Division of Marine Fisheries of the Department of Natural Resources and Community Development, or the designee of such official.

(c) Pursuant to the enabling legislation, other members from the State of North Carolina are selected by the United States Secretary of Commerce from a list of qualified individuals submitted by the Governor of the State. The list of nominees shall be compiled by the Marine Fisheries Commission and must be comprised of individuals who are knowledgeable and experienced with regard to the

management, conservation, or recreational harvest of the fishery resources in the Atlantic Ocean seaward of the States of North Carolina, South Carolina, Georgia, and Florida. Prior to submission of the list of nominees, the Governor may consult with the Commission regarding additions to the list of nominees to be submitted. Should it be necessary for the Governor to submit additional nominees, the list of nominees shall be compiled by the Marine Fisheries Commission."

Sec. 19. G.S. 113-221 is amended in:

(1) Paragraph (a) by substituting for the words "Attorney General in accordance with Chapter 150A" the words "Office of Administrative Hearings in accordance with Chapter 150B", and

(2) Paragraph (e) in the last sentence of the first paragraph by substituting for the word "150A" the word "150B".

Sec. 20. G.S. 113-136(b) is amended after the words "Chapter 143B of the General Statutes," by the addition of the words "Article 5 of Chapter 76 of the General Statutes,".

Sec. 21. G.S. 120-123 is amended by the addition of a new subsection to read:

"(51) The North Carolina Marine Fisheries Commission as established by G.S. 143B-289.5."

Sec. 22. G.S. 113-136(b) is amended by substituting for the words "Part 5" the words "Part 5A".

Sec. 23. Sections 1, 2, 3, 21, and 22 of this bill shall be effective October 1, 1987, and the remaining sections shall be effective upon ratification.

In the General Assembly read three times and ratified this the 20th day of July, 1987.

H.B. 457

CHAPTER 642

AN ACT TO ALLOW FOR RECOUNTS IN PRIMARIES AND ELECTIONS WHERE THE MARGIN IS ONE PERCENT OR LESS.

The General Assembly of North Carolina enacts:

Section 1. Chapter 163 of the General Statutes is amended by adding a new section to read:

"§ 163-179.1. *Mandatory recounts.*--(a) Whenever, according to the canvass made under this Article, the difference between the number of votes received by a candidate who:

- (1) has received the number of votes necessary to be declared nominated for an office in a primary election with a majority; or

(2) has received the number of votes necessary to be declared nominated for an office in a second primary election and the number of votes received by the candidate receiving the next highest number of votes but not declared nominated under G.S. 163-179 is not more than one percent (1%) of the total votes which were cast for that office, except in multi-seat races one percent (1%) of the total votes cast for those two candidates, the county board of elections shall, before declaring the person nominated, order a recount of the primary if the candidate having the next highest number of votes shall, by noon on the second day (Saturdays and Sundays excepted) following the canvass, request in writing such a recount.

(b) Whenever, according to the canvass made under this Article, the difference between the number of votes received by a candidate who has been declared elected to an office in a general election and the number of votes received by the candidate receiving the next highest number of votes but not declared elected under G.S. 163-179 shall be not more than one percent (1%) of the total votes which were cast for that office, except in multi-seat races one percent (1%) of the total votes cast for those two candidates, or where there is a tie vote between those candidates, the county board of elections shall, before issuing a certificate of election, order a recount of the election if the candidate having the next highest number of votes (or in the case of a tie, either candidate) shall, by noon on the second day (Saturdays and Sundays excepted) following the canvass, request in writing such a recount.

(c) The recount shall be conducted under the supervision of the county board of elections.

(d) This section applies to offices other than those covered by G.S. 163-192.1; except that it does not apply to elections conducted under Subchapter IX of this Chapter."

Sec. 2. Chapter 163 of the General Statutes is amended by adding a new section to read:

"§ 163-192.1. *Mandatory recounts.*--(a) Whenever, according to the canvass made under this Article, the difference between the number of votes received by a candidate who:

- (1) has received the number of votes necessary to be declared nominated for an office in a primary election with a majority; or
- (2) received the number of votes necessary to be declared nominated for an office in a second primary election and the number of votes received by the candidate receiving the next highest number of votes but not declared nominated under G.S. 163-192 is not more than one percent (1%) of the total votes which were cast for that office, except in multi-seat races one percent (1%) of the

total votes cast for those two candidates, the State Board of Elections shall, before declaring the person nominated, order a recount of the primary if the candidate having the next highest number of votes shall, by noon on the second day (Saturdays and Sundays excepted) following the canvass, request in writing such a recount.

(b) Whenever, according to the canvass made under this Article, the difference between the number of votes received by a candidate who has been declared elected to an office in a general election and the number of votes received by the candidate receiving the next highest number of votes but not declared elected under G.S. 163-192 shall be not more than one percent (1%) of the total votes which were cast for that office, except in multi-seat races one percent (1%) of the total votes cast for those two candidates, or where there is a tie vote between those candidates, the State Board of Elections shall, before certifying the result to the Secretary of State under G.S. 163-193, order a recount of the election if the candidate having the next highest number of votes (or in the case of a tie, either candidate) shall, by noon on the second day (Saturdays and Sundays excepted) following the canvass, request in writing such a recount.

(c) The recount shall be conducted under the supervision of the State Board of Elections.

(d) This section applies to the offices listed in G.S. 163-192."

Sec. 3. G.S. 163-22 is amended by adding a new subsection to read:

"(m) The State Board of Elections shall issue rules to regulate recounts held under the provisions of G.S. 163-179.1 or G.S. 163-192.1."

Sec. 4. This act shall become effective with respect to all primaries and elections held on or after January 1, 1988.

In the General Assembly read three times and ratified this the 20th day of July, 1987.

H.B. 712

CHAPTER 643

AN ACT TO PROVIDE FOR THE CONSOLIDATED
GOVERNMENT OF WILMINGTON/NEW HANOVER
COUNTY, SUBJECT TO A REFERENDUM.

The General Assembly of North Carolina enacts:

Section 1. The Charter of the Wilmington/New Hanover County Consolidated Government is enacted to read:

"CHARTER - THE WILMINGTON/NEW HANOVER COUNTY
CONSOLIDATED GOVERNMENT.

"CHAPTER 1. GENERAL PROVISIONS.

"ARTICLE 1. ESTABLISHMENT.

"*Sections 1-1. Consolidated Government Established.* (a) The powers, duties, rights, privileges and immunities of the City of Wilmington and the County of New Hanover are consolidated into one Wilmington/New Hanover Consolidated Government, herein called the Government.

(b) The Government is the legal successor to the separate governments of the City of Wilmington and the County of New Hanover.

(c) New Hanover County continues as a county of the State of North Carolina.

(d) The City of Wilmington is abolished as an independent municipal corporation.

"*Sec. 1-2. Boundaries.* The Government has jurisdiction and extends territorially throughout the total area of New Hanover County.

Sections 1-3. - 1-5. Reserved.

"ARTICLE 2. POWERS AND DUTIES.

"*Sec. 1-6. Corporate Powers.* (a) The inhabitants of New Hanover County are a constituted politic and corporate body with the name of the Wilmington/New Hanover Consolidated Government and under that name shall have perpetual succession; shall have a common seal and may alter and renew it at will; may sue and be sued; may contract; may acquire and hold all property and rights of property, real and personal, that may be devised, bequeathed, sold or in any manner conveyed or dedicated to or otherwise acquired by the Government; and may hold, invest, sell or dispose of such property and rights of property.

(b) Except as otherwise provided in this Charter, or Chapter 160B of the General Statutes, the Consolidated City-County Act of 1973, as amended, the Government and its officers and employees may exercise and do enjoy (i) all the powers, duties, rights, privileges, and immunities that counties at or after the effective date of this Charter may exercise and do enjoy under the Constitution and general laws of the State of North Carolina; (ii) all the powers, duties, rights, privileges, and immunities that incorporated municipalities at or after the effective date of this Charter may exercise and do enjoy under the Constitution and general laws of the State of North Carolina; and (iii) all the powers, duties, rights, privileges, and immunities that the City of Wilmington or New Hanover County at the effective date of this Charter could exercise and enjoy under special acts of the General

Assembly. All these special acts applying to the City of Wilmington or New Hanover County are continued and apply to the Government except as expressly repealed by this Charter or when clearly inconsistent with the provisions of this Charter.

Except as otherwise provided in this Charter, the Government may exercise throughout its jurisdiction any power, duty, right, privilege or immunity granted to it by law.

(c) The Government shall have rights, powers, duties, privileges and authority provided by the Charter, and to exercise implied powers necessary to carry out the execution of powers granted in this Charter as fully and complete as if the implied powers were fully enumerated in this Charter and to perform acts pertaining to local affairs, property and government, which are necessary and proper in the legitimate exercise of the Government's duties and functions.

(d) The Government may exercise within the Towns of Wrightsville Beach, Carolina Beach and Kure Beach, the rights, powers, duties, privileges and authority that the County of New Hanover could exercise county-wide before the effective date of this Charter or that North Carolina counties are authorized to exercise county-wide subsequent to the effective date of this Charter. The governing board of any town that elects to continue as a separate municipality, however, may agree to the exercise of any power, duty, right, privilege or immunity of the Government within the town.

(e) In exercising and enjoying any power, duty, right, privilege or immunity, the Government shall follow the procedures, if any, set out in this Charter. If the Charter contains a procedure that does not include all acts necessary to exercise the power, duty, right, privilege or immunity, the Government shall supplement the Charter procedure by applicable procedures set out in other statutes. If no procedure is set out in the Charter, the Government shall follow the procedure set out in any general or applicable local law granting the power, duty, right, privilege or immunity; and if two or more laws, other than this Charter grant the same power, duty, right, privilege or immunity, but with different procedures, the Government may proceed under either.

(f) The procedure set out in any statute, when employed by the Government, is deemed amended to conform to the structure and administrative organization of the Government. If a statute refers to the governing body or the governing board of a county or municipality, the reference, except as otherwise provided in this Charter, means the Board of Commissioners; and a reference to a specific official means the official of the Government who most nearly performs the same duties performed by the specified official. If there is doubt as to the appropriate official, the Board of Commissioners

may by resolution designate an appropriate official to act as fully as if his office were specified in the statute.

Sections 1-7. - 1-9. Reserved.

"ARTICLE 3. CONTINUING MUNICIPAL CORPORATIONS.

"Sec. 1-10. Limitations In Powers. No city or town may annex territory included within the boundaries of the Government unless the Board of Commissioners agrees by resolution.

"Sec. 1-11. Consolidating A Town With The Government. (a) At anytime after the effective date of the Government, any of the Towns of Wrightsville Beach, Carolina Beach and Kure Beach that continue as a separate municipality may be abolished and its powers, duties, rights, privileges and immunities consolidated with those of, and exercised by, the Government.

(b) Any of the towns may consolidate with the Government subject to joint approval of the governing bodies as to an orderly transfer of assets and/or liabilities after a town referendum on consolidation has been held, and a majority of those voting, vote for consolidation. The town's governing board shall cause a referendum to be held within 120 days after: (i) the board has passed an ordinance provisionally consolidating the town with the Government, or (ii) the board has been presented with a petition for consolidation signed by at least ten percent (10%) of the registered voters of the town. The town's governing board shall notify the Board of Commissioners in writing of the results of the referendum.

(c) The effective date of consolidation shall be July 1 next following the referendum.

(d) On the effective date of consolidation, the terms of office of all elected officials of the town automatically terminate and the offices are abolished.

"CHAPTER 2. FORM OF GOVERNMENT.

"ARTICLE 1. STRUCTURE.

"Sec. 2-1. General. (a) The Government shall be a Mayor-Board of Commissioners-Manager form of Government. Except as provided by Section 8-13 of this Charter, the Mayor and the Board of Commissioners shall be elected in odd-numbered years in non-partisan elections, using the election and runoff election method set out in G.S. 163-293. Beginning in 1991, elections shall be held on the same timetable as municipal elections generally.

(b) The Mayor shall be elected at-large by the qualified voters of the Government for a four-year term.

(c) The Board of Commissioners shall consist of eight commissioners at-large elected by the qualified voters of the Government. All representatives shall serve four-year terms.

"Sec. 2-2. *Mayor - Powers and Duties.* The Mayor is the chief executive officer of the Government. Consistent with the provisions of this charter, the Mayor shall have the powers, duties, rights, privileges and immunities granted to and conferred upon the chairman of Boards of County Commissioners and Mayors of the cities by the general laws of the State of North Carolina. The Mayor shall:

- (1) Be the official spokesperson for the Government.
- (2) Preside at meetings of the Board of Commissioners. The Mayor has the same right and responsibility to vote as a member of the Board, but may not vote to break a tie vote in which he participated.
- (3) Represent the Government in its inter-governmental relations.

"Sec. 2-3. *Mayor Pro Tempore.* At its organizational meeting after each election, the members of the Board of Commissioners shall elect from among their number a Mayor pro tempore, to serve at the pleasure of the Board of Commissioners. The Mayor pro tempore shall preside over meetings of the Board of Commissioners in the absence of the Mayor, but he has no right to break a tie vote in which he participated. If the Mayor is absent from the county, he may designate the Mayor pro tempore as acting Mayor during his absence; during that time, the Mayor pro tempore has all the powers, rights, duties, privileges, and immunities of the Mayor.

"Sec. 2-4. *Board of Commissioners - Powers and Duties.* The legislative powers of the Government are vested in the Board of Commissioners. The powers, duties and responsibilities of the Board of Commissioners shall include, but not be limited to:

- (1) Approving a system for personnel administration.
- (2) Appointing, removing or suspending from office the manager, attorney, clerk to the Board, police chief and fire chief by a two-thirds vote of the Board including the Mayor.
- (3) Performing the other duties, and responsibilities defined in this Charter.

Sections 2-5. - 2-8. *Reserved.*

"ARTICLE 2. MAYOR - QUALIFICATIONS AND CONDITIONS OF OFFICE.

"Sec. 2-9. *Eligibility for Office.* To be eligible for election to Mayor, a person must be eligible for election by the people to office under the Constitution of North Carolina. The Mayor shall not hold another paid position within the Government.

"Sec. 2-10. *Compensation.* The initial annual salary of the Mayor shall be fourteen thousand five hundred dollars (\$14,500).

"Sec. 2-11. *Vacancy or Removal.* (a) The Board of Commissioners shall declare the office of Mayor to be vacant when one or more of the following conditions exists:

- (1) The Mayor ceases to be a qualified voter of the Government.
- (2) The Mayor dies, resigns, or is declared mentally incompetent by a court of competent jurisdiction.
- (3) The Mayor is removed from office under the general laws of North Carolina.

(b) A vacancy in the office of Mayor shall be filled as set forth in G.S. 160A-63; provided, however, the Mayor pro tempore shall be appointed to serve as Mayor, with all the powers and duties of the office, until a Mayor is elected and takes office.

Sections 2-12. - 2-14. Reserved.

"ARTICLE 3. BOARD OF COMMISSIONERS - QUALIFICATION AND CONDITIONS OF OFFICE.

"Sec. 2-15. *Eligibility for Office.* To be a member of the Board of Commissioners, a person must be eligible for election by the people to office under the laws and Constitution of North Carolina. A member shall not hold another paid position within the Government.

"Sec. 2-16. *Compensation.* The initial annual salary of the Commissioners shall be nine thousand six hundred dollars (\$9,600).

"Sec. 2-17. *Vacancy or Removal.* (a) The Board of Commissioners shall declare the office of a Commissioner to be vacant when one or more of the following conditions exists:

- (1) A Commissioner ceases to be a qualified voter of the Government.
- (2) A Commissioner dies, resigns or is declared mentally incompetent by a court of competent jurisdiction.
- (3) The Commissioner is removed from office under the general laws of North Carolina.
- (4) The Mayor pro tempore is appointed to fill a vacancy in the office of Mayor.

(b) A vacancy in the office of Commissioner shall be filled as set forth in G.S. 160A-63.

Sections 2-18. - 2-26. Reserved.

"CHAPTER 3. ORGANIZATION AND LEGISLATION.

ARTICLE 1. CONDUCT OF PROCEEDINGS.

"Sec. 3-1. *Mayor to Preside.* The Mayor shall preside at all meetings of the Board of Commissioners and in the Mayor's absence, the Mayor pro tempore shall preside. The Board of Commissioners

shall comply with the provisions of the Open Meetings Law, Article 33C of Chapter 143 of the General Statutes. The meetings of the Board of Commissioners shall be conducted in accordance with rules of procedures adopted by the Board.

"*Sec. 3-2. Meetings.* (a) The Board of Commissioners shall hold an organizational meeting on the first Monday in December following a general election in which the Board of Commissioners is elected, except for the initial formation of the Government. The newly elected Mayor and members of the Board of Commissioners shall take and subscribe the oath of office required by the North Carolina Constitution. A person absent from the organizational meeting may take and subscribe the oath at a later time.

(b) Regular and special meeting of the Board of Commissioners shall be scheduled, called and held pursuant to the provisions of G.S. 153A-40.

"*Sec. 3-3. Quorum and Voting.* (a) A quorum shall be a majority of the membership of the Board of Commissioners including the Mayor, but excluding vacant seats. A member who has withdrawn from a meeting without being excused by a majority vote of the remaining members present shall be counted as present for purposes of determining whether or not a quorum is present.

(b) A member of the Board of Commissioners may be excused from voting only on matters involving his official conduct or his own financial interests.

(c) A failure to vote by any member of the Board of Commissioners who is physically present or who has withdrawn and has not been excused from voting, shall be recorded as an affirmative vote.

(d) The vote of each member of the Board of Commissioners on each ordinance, resolution, motion or other action shall be recorded.

Sections 3-4. - 3-6. Reserved.

"ARTICLE 2. PROCEDURE FOR EXERCISE OF LEGISLATIVE POWERS.

"*Sec. 3-7. Form of Action.* The Board of Commissioners shall take official action only by the adoption of ordinances, resolutions or motions entered in full in the minutes of the meeting.

"*Sec. 3-8. Ordinance Procedures.* (a) Official actions which are to become law shall be by ordinance.

(b) Each proposed ordinance shall be in writing, contain only one subject and be clearly titled expressing that subject.

(c) No ordinance shall be passed or adopted until it has been read at two regular meetings, not less than one week apart and approved by the affirmative vote of the majority of the members, including the Mayor. One of the meetings shall be an evening meeting. This

requirement for a second reading may be waived by an affirmative unanimous vote of the members present.

(d) The Board of Commissioners may provide in its discretion that an ordinance shall become effective only upon a vote of the people. If the Board decides to require voter approval, it shall adopt a resolution at the same meeting, calling a referendum for the purpose of submitting the ordinance to a vote. Such resolution may be repealed or modified up to 60 days prior to the scheduled referendum. The referendum shall be held within 120 days after the day the ordinance is adopted. The referendum shall be conducted pursuant to the provisions of Chapter 163 of the General Statutes of North Carolina applicable to cities. An ordinance adopted by a vote of the people shall be repealed only upon the vote of the people.

"CHAPTER 4. ADMINISTRATION.

"ARTICLE 1. IMPLEMENTATION.

"Sec. 4-1. *Initial Organization.* The initial administrative organization of the Government shall be that of the merging governments on the effective date of the Government and the Government initially shall be organized into at least the departments that were in existence prior to consolidation.

"Sec. 4-2. *Reorganization.* The Board of Commissioners, except as restricted by this Charter or the general laws of the State, may organize or reorganize the administrative structure of the Government by creating, transferring, consolidating, reorganizing and abolishing offices, positions, departments, agencies, boards, commissions, and authorities of the Government.

Sections 4-3. - 4-4. Reserved.

"ARTICLE 2. APPOINTED POSITIONS.

"Sec. 4-5. *Manager.* There shall be a Government Manager appointed in accordance with Chapter 2 of this Charter. The Manager shall report to the Board of Commissioners and shall perform duties as required by this Charter, local ordinances, and State law and shall perform other duties as directed by the Board of Commissioners.

"Sec. 4-6. *Attorney.* There shall be a Government Attorney appointed in accordance with Chapter 2 of this Charter. The Attorney shall report to the Board of Commissioners and shall perform duties as required by this Charter, local ordinances, and State law and shall perform other duties as directed by the Board of Commissioners.

"Sec. 4-7. *Clerk to the Board of Commissioners.* There shall be a Clerk to the Board of Commissioners appointed in accordance with

Chapter 2 of this Charter. The Clerk to the Board of Commissioners shall report to the Board of Commissioners and shall perform duties as required by this Charter, local ordinances, and State law and shall perform other duties as directed by the Board of Commissioners.

Sections 4-8. - 4-13. Reserved.

"ARTICLE 3. SPECIAL APPOINTMENTS.

"Sec. 4-14. Police Chief. The Board of Commissioners shall appoint, suspend or remove the Chief of Police. The Chief of Police shall be the head of the Government Police Department. The Chief of Police shall:

(1) Have law enforcement training and have held a prior position in law enforcement, including administrative duties and responsibilities to demonstrate the capability to perform the requirements of this position.

(2) Direct and supervise department activities including administration of:

- a. The enforcement of the criminal laws and regulations of North Carolina, and the ordinances of the Government.
- b. Patrol and criminal investigations, including training programs and support services within the boundaries of the Government.
- c. Other duties as required by this Charter and ordinances and as directed by the Manager and the Board of Commissioners.

"Sec. 4-15. Fire Chief. The Board of Commissioners shall appoint, remove or suspend the Fire Chief. The Fire Chief shall be the head of the Government Fire Department. The Fire Chief shall:

(1) Have fire training and have held a prior position in fire fighting and prevention including administrative duties and responsibilities to demonstrate the capability to perform the requirements of this position.

(2) Direct and supervise the Urban Service District Fire Department.

(3) Perform other duties as required by this Charter and ordinances and as directed by the Manager and Board of Commissioners.

"ARTICLE 4. VOLUNTEER FIRE DEPARTMENTS.

"Sec. 4-16. Contracts With Volunteer Fire Departments. The Government may continue to contract with the Volunteer Fire Departments located in the County to provide fire protection in the areas outside the Urban Service District.

"ARTICLE 5. OTHER OFFICES.

"Sec. 4-17. *Sheriff.* The Sheriff shall be responsible for the performance of duties imposed upon the Sheriff of New Hanover County by the Constitution or by the general or special laws of North Carolina and shall coordinate with the Police Chief the administration of law enforcement in the consolidated Government.

"CHAPTER 5. BOARDS AND COMMISSIONS.

"ARTICLE 1. GENERAL PROVISIONS.

"Sec. 5-1. *General Authority.* The Government, except as limited by this Charter or general law or special act of the General Assembly, may create new committees, agencies, boards, commissions, and authorities and may abolish or modify any existing committees, agencies, boards, commissions, and authorities.

"Sec. 5-2. *Statutory.* Committees, agencies, boards, commissions, and authorities, however, denominated, heretofore created pursuant to authority of general law or special acts of the General Assembly, are continued.

"Sec. 5-3. *Discretionary.* Committees, agencies, boards, commissions, and authorities, however denominated, not specifically authorized by general law or special acts of the General Assembly, shall be abolished one year after the date the members of the initial Board of Commissioners take office unless the Board has taken prior action to extend or modify them.

Sections 5-4. - 5-6. Reserved.

"CHAPTER 6. FINANCE.

"ARTICLE 1. BUDGETING AND SERVICE DISTRICTS.

"Sec. 6-1. *Application of General Law.* The Government is subject to the Local Government Finance Act, Chapter 159 of the General Statutes.

"Sec. 6-2. *Districts Established.* The General Service District extends throughout New Hanover County. The Board of Commissioners may define, extend, consolidate and modify Urban Service Districts under procedures of general law. It is the intent of this Charter that the Board of Commissioners will define as Urban Service Districts the total area immediately before the effective date of this Charter of the City of Wilmington and the total area immediately before the effective date of this Charter of the Rural Fire District.

"Sec. 6-3. *Preparation of Budget.* (a) The Manager is responsible for preparing the annual budget as provided in general law, except that he shall prepare the budget in separate parts: one for the General Service District, and one for each Urban Service District.

(b) The cost of providing each service, function or activity shall be allocated (i) to the part of the budget corresponding to the district in which the service, function or activity is to be provided or (ii) in proportion to the extent to which each is to be provided in the event some service, function or activity is to be provided to a greater extent in an urban service district than county-wide.

(c) Each urban service district is responsible for the financing of its appropriate share of debt service on all bonds issued by the Government and used to finance capital facilities associated with providing or maintaining services, facilities and functions for the urban service district in addition to or to a greater extent than those provided or maintained for the entire county.

(d) Urban service district expenses shall be paid from special taxes levied within each urban service district or from other revenues allocated to each urban service district.

(e) The Board of Commissioners shall schedule and hold public hearings on the proposed budgets submitted to it. Notice of the date fixed for the beginning of such public hearings shall be published once a week for two successive calendar weeks in a newspaper having general circulation in New Hanover County. The notice shall be published the first time not less than 14 days before the date fixed for the beginning of such public hearings. This section is intended to modify G.S. 159-17.

Sections 6-4. through 6-6. Reserved.

"Sec. 6-7. General Authority to Levy Taxes and Impose Charges. The Government shall have the full power and authority to levy and collect any tax, fee or charge authorized by this Charter, local act or the general laws of the State for cities or counties, subject to any limitations imposed by this Charter or Chapter 160B of the North Carolina General Statutes, the Consolidated City-County Act of 1973, as amended.

"Sec. 6-8. Property Tax Administration. Property in New Hanover County shall be listed, appraised, and assessed and taxes on property shall be levied and collected as provided by general law for counties, except as otherwise provided in this Charter and Chapter 160B of the North Carolina General Statutes.

Sections 6-9. - 6-11. Reserved.

"Sec. 6-12. Authority to Issue Bonds. The Government may issue general obligation or revenue bonds for any purpose for which either county or municipal governments in North Carolina are authorized to issue general obligation or revenue bonds under the general laws of the State.

"CHAPTER 7. EMPLOYMENT AND BENEFITS.**"ARTICLE 1. PERSONNEL SYSTEM.**

"Sec. 7-1. Authorized. The Board of Commissioners shall establish by ordinance a system of personnel administration. Except as otherwise provided by law and this Charter, the Government Manager shall appoint officers and employees not elected by the people in accordance with such general personnel rules, regulations, policies, or ordinances as the Board of Commissioners may adopt.

"Sec. 7-2. Coverage of System. The personnel system shall cover all officers and employees of the Government except:

- (1) Elected officials.
- (2) Employees of the New Hanover County Board of Education.
- (3) Employees of any agency, board, commission and authority authorized to appoint its own chief administrative officer except as otherwise provided in this Charter or general law.
- (4) Employees of the Sheriff except as provided by ordinance adopted in accordance with Article 2, and Register of Deeds where covered in personnel matters under the provisions of general law.
- (5) Employees subject to State or federal civil service regulations and procedures, to the extent that such regulations and procedures are inconsistent with the Government.

"Sec. 7-3. Pension System. A pension system shall be available to employees of the Government.

Sec. 7-4. - 7-7. Reserved.

"ARTICLE 2. CIVIL SERVICE COMMISSION.

"Sec. 7-8. Establishment. There shall be created a Civil Service Commission consisting of seven members. Each member must be a citizen and resident of the Government. No member shall be an officer or employee of the Government, or be a member of the immediate family of an employee of the Government or a former officer or employee of the Government. The Board of Commissioners by ordinance shall prescribe the method of appointment, term of office, and procedures for filling vacancies for members of the Civil Service Commission.

"Sec. 7-9. Jurisdiction. (a) The Commission shall have jurisdiction over permanent employees of the Police Department who are clothed with the full power of arrest and have the primary duty of enforcing the criminal laws of the city and State, excluding the Chief of Police and those employees whose primary responsibility is that of issuing parking tickets or collecting fees.

(b) The Commission shall have jurisdiction over permanent employees of the Fire Department whose primary function is that of protecting life and property through fire fighting, including those fire officers assigned to supporting services of the Fire Department, except for the Fire Chief.

(c) The Board of Commissioners by ordinance may specify other classes of employees under the jurisdiction of the Civil Service Commission.

"Sec. 7-10. Probationary Employees. Employees of the Police and Fire Departments may be hired on a probationary basis for a period not to exceed 18 months. During this period, the Chief of the applicable department may dismiss after notifying the Government Manager. Unless dismissed prior to the end of the probationary period, an employee shall become a permanent employee with all rights and privileges contained in this Article.

"Sec. 7-11. Demotion and Dismissal of Employees. Permanent employees under the jurisdiction of the Civil Service Commission may be demoted or dismissed only for cause and with an opportunity to be heard in his or her own defense. The Board of Commissioners retains the authority to demote or terminate positions because of a lack of work or conditions beyond the control of the Government. Nothing in this Article shall be so construed as to deprive the Board of Commissioners of its control over the finances of the Government.

"Sec. 7-12. Powers and Duties. (a) The Civil Service Commission shall hear and decide appeals by permanent employees under the jurisdiction of the Commission concerning demotions or dismissals from employment with the Government. The Commission shall have the right and power to compel, by subpoena, attendance, testimony of witnesses or for production of evidence and the Commission may apply to a court of competent jurisdiction for an order requiring that its order be obeyed. Appeals shall be taken within times prescribed by the Commission by general rule by filing with the Commission a notice of appeal, specifying the grounds thereof. The Commission shall fix a reasonable time for the hearing of the appeal, give due notice thereof to the parties, and decide it within a reasonable time. The Commission may affirm the demotion or dismissal of an employee or take any other appropriate action upon finding the employee has violated a rule or regulation applicable to the employee. If the Commission determines that the employee has not violated a rule or regulation, the Commission shall reinstate the employee to his or her former position with appropriate back pay.

(b) Every decision of the Commission shall be subject to review by the Superior Court of New Hanover County by proceedings in the nature of *certiorari*. Any petition for review by the Superior Court shall be filed with the Clerk of Superior Court within 10 days after the decision of the Commission is filed in the office of the Secretary of the Commission, or after a written copy thereof is delivered to every aggrieved party who has filed a written request for such copy with the secretary or chairman of the Commission at the time of its hearing of the case, whichever is later. The decision of the Commission may be delivered to the aggrieved party either by personal service or by registered mail or certified mail return receipt requested. In accordance with the writ of the Court, the secretary of the Civil Service Commission shall transmit to the Superior Court a complete transcript of all papers and proceedings concerning the order or decree or action of the Civil Service Commission appealed from.

"Sec. 7-13. *Other Personnel Policies*. Unless specifically excepted by ordinance, all other ordinances and policies affecting the employees of the Government shall apply to employees under the jurisdiction of the Civil Service Commission.

"CHAPTER 8. CONTINUATION AND TRANSITION.

"ARTICLE I. CONTINUATION.

"Sec. 8-1. *Continuation of Ordinances and Resolutions*. Ordinances and resolutions of the City of Wilmington and New Hanover County that are in force immediately before the effective date of the Government and that are not inconsistent with this Charter continue in full force and effect within the area in which they applied. They become ordinances and resolutions of the Government and shall continue in force until repealed or amended by the Board of Commissioners. Orders, rules and regulations made by any officer, agency, board, commission or authority of the City of Wilmington and New Hanover County that are in force immediately before the effective date of the Government and that are not inconsistent with this Charter also continue in force within the area in which they applied until repealed or amended by the appropriate officer, agency, board, commission or authority of the Government.

"Sec. 8-2. *Continuation of Hearings and Proceedings*. Petitions, hearings and other proceedings pending before any officer, office, department, agency, board, commission or authority of the City of Wilmington or New Hanover County continue and remain in full force and effect, even if the officer, office, department, agency, board, commission or authority has been abolished or consolidated by this Charter. The petition, hearing or proceeding shall be completed by the officer, office, department, agency, board, commission or

authority of the Government that succeeds to the powers, duties, rights, privileges and immunities of the abolished or consolidated agency.

"Sec. 8-3. Transfer of Assets and Liabilities. On the effective date of the Government: (1) Property, real and personal and mixed, belonging to the City of Wilmington and New Hanover County vests in, belongs to and is the property of the Government.

(2) Judgments, liens, rights of liens and causes of action of any nature in favor of any of the governments listed in subdivision (1) vest in and remain and inure to the benefit of the Government.

(3) Rentals, taxes, assessments and any other funds, charges or fees owing to any of the governments listed in subdivision (1) are owed to and may be collected by the Government.

(4) Any action, suit, or proceeding pending against, or having been instituted by, any of the governments listed in subdivision (1) shall not be abated by this Charter or by consolidation, but shall be continued and completed in the same manner as if consolidation had not occurred. The Government shall be a party to these actions, suits and proceedings in the place and stead of the merging government and shall pay or cause to be paid any judgment rendered against that government in any of these actions, suits or proceedings. No new process need be served in any of the actions, suits or proceedings.

(5) Obligations, contracts, and agreements of the Governments listed in subdivision (1), including outstanding general obligation bonds and bond anticipation notes of the City of Wilmington, are assumed by the Government, and all these obligations, contracts, and agreements so assumed are constituted obligations, contracts, and agreements of the Government. The full faith and credit of the Government is deemed to be pledged for the punctual payment of the principal of and interest on all general obligation bonds and bond anticipation notes assumed by the Government pursuant to this section, and all the taxable property within the Government shall be and remain subject to taxation for these payments. The Government shall comply with any outstanding covenants previously entered into by the City of Wilmington by which the City pledged revenues other than taxes to the retirement of the City's general obligation indebtedness.

"Sec. 8-4. Continuation of Officers and Employees. (a) On the effective date of the Government, officers and employees, excluding the Mayor, Council members and Board of Commissioner members, of the Governments of New Hanover County and the City of

Wilmington become officers and employees of the Government.

(b) To the maximum extent possible, any necessary reductions in the total number of positions as a result of consolidation of the City and County shall be achieved through normal attrition.

(c) Former employees of the City and County, who are performing at an expected level or above, and who have five or more years of service will have continued employment with the Government. Where practical, these employees will be offered the same position or positions consistent with their qualifications. If these employees choose not to accept the position offered, they shall receive five days of severance pay for every year of service, with a maximum of 25 weeks' pay. If an employee is placed in a position with a lower salary, the salary reduction will be no more than ten percent (10%) of his or her salary prior to consolidation.

(d) Employees with less than five years' service may be terminated and given severance pay calculated in the same manner as (c) with a minimum of two weeks' pay.

(e) The employees in appointed positions of Manager, Attorney, and Clerk would continue service as consultants to aid their successors for a six-month transition period after the effective date of consolidation. Salaries for these employees would remain the same as their salaries immediately prior to the effective date. At the end of the transition period, these employees shall be compensated as provided for in (c) above.

(f) Employees of the Government who had service with either the City or County will retain vacation, sick leave, health, and retirement accrued immediately prior to the effective date.

(g) Nothing in this Charter will supersede the provisions of the Government Personnel Ordinance and Policies related to performance and disciplinary problems.

"Sec. 8-5. Continuation of Offices. Offices, departments, committees, agencies, boards, commissions and authorities, heretofore created pursuant to general law or special acts of the General Assembly, or by resolutions or ordinances of the City Council of Wilmington or New Hanover County Board of Commissioners, or by joint resolutions of these governing bodies are continued with the same duties, functions and responsibilities except as expressly provided by this Charter or other acts of the General Assembly.

"Sec. 8-6. Members, Officers and Employees of Boards and Agencies. Except as otherwise provided in this Charter, the members, officers and employees of all agencies, boards, commissions and authorities continue as members, officers and employees of those agencies,

boards, commissions and authorities and shall continue to perform the duties and enjoy the powers, rights, privileges and immunities they possessed immediately prior to the effective date of the Government. Nothing in this section impairs the authority of the Government with respect to those boards, commissions, authorities and agencies or to any of their members, officers or employees.

Sections 8-7. - 8-10. Reserved.

"ARTICLE 2. TRANSITION.

"*Sec. 8-11. Effective Date.* The Wilmington/New Hanover County Consolidated Government shall become effective on the first Monday in June 1989, after the acceptance by the voters of the City of Wilmington and New Hanover County as certified by the Board of Elections and after election of the initial Board of Commissioners.

"*Sec. 8-12. Effect on City and County Office Holders.* The Mayor, members of the Wilmington City Council and members of the New Hanover County Board of Commissioners shall serve until the effective date of the Consolidated Government.

"*Sec. 8-13. Initial Government Elections.* Pursuant to Chapter 2 of this Charter, the initial election for Mayor and membership on the Board of Commissioners shall be held in 1988 using the election and run-off election method set out in G.S. 163-293:

(1) The initial Mayor shall be elected to a term ending the first Monday in December 1993.

(2) The initial members of the Board of Commissioners shall be elected to terms of office as follows:

a. The four At-Large Commissioners with the highest votes shall serve a term ending the first Monday in December 1993.

b. The four remaining At-Large Commissioners shall serve a term ending the first Monday in December 1991.

(3) The initial election shall be on the date of the primary as established by G.S. 163-1, and the initial runoff shall be held on the date of the second primary as provided by G.S. 163-111(e).

(4) The election timetable for filing notices of candidacy for the initial election shall be the same as for county officers.

After the initial term of office, the Mayor and members of the Board of Commissioners shall be elected to four-year terms.

"*Sec. 8-14. Transition Committee.* (a) There shall be a Transition Committee consisting of the initial Board of Commissioners. Any person holding another elective office is deemed to serve ex officio.

(b) The Transition Committee shall meet within 30 days after their election by the voters, upon the call of the Mayor-elect. The Mayor-elect shall serve as Chairman of the Transition Committee.

(c) The Transition Committee shall elect other necessary officers and adopt its rules and procedures and shall be provided a budget to pay for expenses incurred in planning for the new governmental structure.

(d) Each of the Governments shall participate in the funding of the activities of the Committee.

"Sec. 8-15. Initial Organizational Meeting. The Mayor-elect and the Board of Commissioners-elect shall hold an organizational meeting on the first Monday in June 1989. At that time, those persons shall take the oath of office and hold the initial organizational meeting.

"Sec. 8-16. Transition Budgets and Tax Rates. (a) From the effective date of the Government to July 1, 1989, the 1988-89 budget ordinances as adopted and amended by New Hanover County and the City of Wilmington shall be administered in accordance with their terms by the Board of Commissioners and officers of the Government. The Board of Commissioners, however, may amend the 1988-89 budget ordinances of any consolidated government as adopted by that Government in any manner or for any purpose for which the Government could have made an amendment in the absence of consolidation.

(b) The tax rates of the Government shall be adjusted to the levels of service provided.

"Sec. 8-17. Organizational Transition. The Board of Commissioners shall appoint the Manager, Attorney, Clerk to the Board, Police Chief, and Fire Chief on the effective date of the Government. Department Directors shall be appointed by the Manager.

"Sec. 8-18. No Election of County Commissioners. No election of members of the Board of Commissioners of New Hanover County shall be held in 1988. Members shall hold over as provided by Section 8-12.

"CHAPTER 9.

"CHANGES IN FORM AND STRUCTURE OF GOVERNMENT.

"Sec. 9-1. Authority to Modify. The voters of the Government may amend this Charter to modify the form and structure of the Government with respect to matters specified under G.S. 160A-101.

"Sec. 9-2. Method of Modifying. Modification of the form and structure of the Government shall be made pursuant to the procedures set forth in Part 4 of Article 5 of Chapter 160A of the General Statutes except that no modification may become effective until approved by the

voters in a referendum. This section shall not restrict the authority of the Board of Commissioners as otherwise provided in this Charter.

"CHAPTER 10. INTENT AND SEPARABILITY.

"The people residing within the area of the Government declare that by the adoption of this Charter it is their intent to consolidate the governmental and corporate functions of the City of Wilmington and the County of New Hanover so that the consolidating governments may be operated as one governmental entity in the interest of efficient, economical, responsive and responsible democratic government. This Charter shall continue in full force and effect even if any of its severable provisions not essential to this objective is held unconstitutional or void, and each provision of this Charter is severable from each other provision."

Sec. 2. This act shall not be deemed to repeal, modify, or in any manner affect any validating laws applying to the County of New Hanover or to the City of Wilmington. As used in this section, the term "validating laws" means laws ratifying, confirming, approving or validating official proceedings (including special assessment and annexation proceedings), actions (including acquisitions and disposals of property or interests therein), contracts, bonds, or obligations of any kind.

Sec. 3. No provision of this act is intended, nor shall any be construed, to affect in any way any right or interest:

(1) now vested or accrued, in whole or in part, the validity of which might be sustained or preserved by reference to any provision of law repealed by this act; or

(2) derived from, or which might be sustained or preserved in reliance upon, action heretofore taken (including the adoption of ordinance or resolutions) pursuant to or within the scope of any provision of law repealed by this act.

Sec. 4. No law repealed, expressly or by implication, before the effective date of this act, is revived by:

(1) the repeal in this act of any act repealing that law, or

(2) any provision of this act that disclaims an intention to repeal or affect enumerated laws.

Sec. 5. All laws and clauses of laws in conflict with the provisions of this act are repealed.

Sec. 6. Sections 1 through 5 of this act shall become effective only if approved by the voters of the City of Wilmington and New Hanover County in a referendum to be held on October 6, 1987. To be approved, the act must receive the votes of a majority of the voters of the City of Wilmington and a majority of all of the voters of New

Hanover County voting in the referendum. The form of the ballot shall be substantially the same form as provided in G.S. 153A-405.

Sec. 7. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 20th day of July, 1987.

H.B. 715

CHAPTER 644

AN ACT TO MAKE TECHNICAL CHANGES TO THE RULES RELATING TO CANCELLATION AND RESTORATION OF CORPORATE CHARTERS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-230 reads as rewritten:

"§ 105-230. *Charter suspended for failure to report.*--If a corporation required by the provisions of this Subchapter to file any report or return or to pay any tax or fee, either as a public utility (not as an agency of interstate commerce) or as a corporation incorporated under the laws of this State, or as a foreign corporation domesticated in or doing business in this State, or owning and using a part or all of its capital or plant in this State, fails or neglects to make any such report or return or to pay any such tax or fee for 90 days after the time prescribed in this Subchapter for making such report or return, or for paying such tax or fee, the Secretary of Revenue shall certify such fact to the Secretary of State. The Secretary of State shall thereupon suspend the articles of incorporation of any such corporation which is incorporated under the laws of this State by appropriate entry upon the records of his office, or suspend the certificate of authority of any such foreign corporation to do business in this State by proper entry. Thereupon all the powers, privileges, and franchises conferred upon such corporation by such articles of incorporation or by such certificate of authority shall cease and determine. The Secretary of State shall immediately notify by ~~certified~~ mail every such domestic or foreign corporation of the action taken by him, and also shall immediately certify such suspension to the register of deeds of the county in which the principal office or ~~place of business~~ registered office of such corporation is located in this State with instructions to ~~said~~ the register of deeds, and it shall be the register's duty to record and index the suspension in the Record of Incorporations; ~~promptly.~~ a After the recordings, the register ~~shall note the fact of recordation on the said copy and return it to the corporation or its representative.~~ If the corporation or its representative cannot be located, the register may destroy the copy certificate."

Sec. 2. G.S. 105-232 reads as rewritten:

"§ 105-232. *Corporate rights reinstated; receivership and liquidation.*--Any corporation whose articles of incorporation or certificate of authority to do business in this State has been suspended by the Secretary of State, as provided in G.S. 105-230, ~~or similar provisions of prior Revenue Acts, upon the filing, which complies within five years after such suspension, or cancellation under previous acts, with the Secretary of State, of a certificate from the Secretary of Revenue that it has complied with all the requirements of this Subchapter and paid~~ pays all State taxes, fees, or penalties due from it (which total amount due may be computed, for years prior and subsequent to said suspension, ~~or cancellation, in the same manner as if such suspension or cancellation had not taken place), and upon payment to the Secretary of Revenue of a fee of twenty-five dollars (\$25.00) to cover the cost of reinstatement, shall be entitled to exercise again its rights, privileges, and franchises in this State; and the Secretary of State shall cancel the entry made by him under the provisions of G.S. 105-230 or similar provisions of prior Revenue Acts, and shall issue his certificate entitling such corporation to exercise again its rights, privileges, and franchises, and certify such reinstatement to the register of deeds in the county in which the principal office or place of business of such corporation is located with instructions to said register of deeds, and it shall be his duty to cancel from his records the entry showing suspension of corporate privileges.~~ The Secretary of Revenue shall notify the Secretary of State of such compliance and the Secretary of State shall reinstate the corporation by appropriate entry upon the records of his office. The Secretary of State shall immediately notify the corporation of the reinstatement and certify such reinstatement to the register of deeds of the county in which the suspension was recorded. It shall thereupon be the register's duty, upon receipt of the fee specified in G.S. 161-10 from the corporation, to record and index the reinstatement in the Records of Corporations. The Register of Deeds shall note the fact of recordation on the certificate and forward it to the corporation or its representative.

When the certificate or articles of incorporation in this State have been suspended by the Secretary of State, as provided in G.S. 105-230, or similar provisions of prior or subsequent Revenue Acts, and there remains property held in the name of the corporation, or undisposed of at the time of such suspension, or there remain possibilities of reverters, reversionary interests, rights of reentry or other future interests that may accrue to the corporation or its successors or stockholders, and the time within which the corporate

rights might be restored as provided by this section has expired, any stockholder or any bona fide creditor or other interested party may apply to the superior court for the appointment of a receiver. Application for such receiver may be made in a civil action to which all stockholders or their representatives or next of kin shall be made parties. Stockholders whose whereabouts are unknown and unknown stockholders and unknown heirs and next of kin of deceased stockholders may be served by publication, as well as creditors, dealers and other interested persons, and a guardian *ad litem* may be appointed for any stockholders or their representatives who may be an infant or incompetent. The receiver shall enter into such bond with such sureties as may be set by the court and shall give such notice to creditors by publication or otherwise as the court may prescribe. Any creditor who shall fail to file his claim with the receiver within the time set shall be barred of the right to participate in the distribution of the assets. Such receiver shall have authority to sell such property or possibilities of reverts, reversionary interests, rights of reentry, or other future interests, upon such terms and in such manner as shall be ordered by the court, apply the proceeds to the payment of any debts of such corporation, and distribute the remainder among the stockholders or their representatives in proportion to their interests therein. Shares due to any stockholder who is unknown or whose whereabouts are unknown shall be paid into the office of the clerk of the superior court, by him to be disbursed according to law, in the event the stock books of the corporation shall be lost or shall not reflect the latest stock transfers, the court shall determine the respective interests of the stockholders from the best evidence available, and the receiver shall be protected in acting in accordance with such finding. Such proceeding is authorized for the sole purpose of providing a procedure for disposing of the corporate assets by the payment of corporate debts, including franchise taxes which had accrued prior to the suspension of the corporate charter and any other taxes the assessment or collection of which is not barred by a statute of limitations, and by the transfer to the stockholders or their representatives their proportionate shares of the assets owned by the corporation."

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 20th day of July, 1987.

H.B. 819

CHAPTER 645

AN ACT TO REVISE MAXIMUM FEES AUTHORIZED FOR THE
NORTH CAROLINA STATE BOARD OF EXAMINERS IN
OPTOMETRY.

The General Assembly of North Carolina enacts:

Section 1. G.S. 90-123 is rewritten to read:

"In order to provide the means of carrying out and enforcing the provisions of this Article and the duties of devolving upon the North Carolina State Board of Examiners in Optometry, said Board is hereby authorized to charge and collect fees established by its rules not exceeding the following:

- | | |
|---|----------|
| (1) Each application for general optometry examination | \$400.00 |
| (2) Each general optometry license renewal, which fee shall be annually fixed by the Board, and not later than December 15 of each year written notice of the amount of the renewal fee shall be given to each optometrist licensed to practice in this State by mailing the notice to the last address of record with the Board of each such optometrist | 250.00 |
| (3) Each certificate of license to a resident optometrist desiring to change to another state or territory | 200.00 |
| (4) Each license issued to a practitioner of another state or territory to practice in this State | 250.00 |
| (5) Each license to resume practice issued to an optometrist who has retired from the practice of optometry or who has removed from and returned to this State | 250.00 |
| (6) Each application for registration as an optometric assistant or renewal thereof | 50.00 |
| (7) Each application for registration as an optometric technician or renewal thereof | 50.00 |
| (8) Each duplicate license or renewal thereof for each branch office | 50.00". |

Sec. 2. G.S. 90-122 is amended in the first paragraph by deleting "thirty-five dollars (\$35.00)" and inserting in lieu thereof: "fifty dollars (\$50.00)".

Sec. 3. G.S. 90-118.10 is amended in the fourth paragraph by deleting "ten dollars (\$10.00)" and inserting in lieu thereof: "fifty dollars (\$50.00)".

Sec. 4. This act shall become effective January 1, 1988.

In the General Assembly read three times and ratified this the 20th day of July, 1987.

H.B. 869

CHAPTER 646

AN ACT TO ALLOW THE BLADEN COUNTY BOARD OF COMMISSIONERS TO ALTER THE MANNER OF THEIR ELECTION.

The General Assembly of North Carolina enacts:

Section 1. The Bladen County Board of Commissioners may alter the structure of that board as provided under G.S. 153A-58 and G.S. 153A-59 by adopting a resolution before January 1, 1988, which complies with the provisions of G.S. 153A-60(1) through G.S. 153A-60(3).

Sec. 2. Any modification adopted under Section 1 of this act may not be used for any election held after January 1, 1991, unless it is either:

- (1) ratified by act of the General Assembly which is ratified on or before April 15, 1991; or
- (2) approved by referendum conducted on or before December 31, 1990, in accordance with G.S. 153A-60(4), G.S. 153A-61, G.S. 153A-62, G.S. 153A-63, and G.S. 153A-64.

Sec. 3. Before adopting any resolution under Section 1 of this act, the Bladen County Board of Commissioners shall hold a public hearing on that resolution, and shall publish notice of the hearing at least ten days before it is held.

Sec. 4. If a resolution is adopted under Section 1 of this act, a certified true copy of it shall be filed with the Secretary of State, the Supreme Court Library, and with the Legislative Library.

Sec. 5. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 20th day of July, 1987.

H.B. 893

CHAPTER 647

AN ACT TO AUTHORIZE JOHNSTON COUNTY TO LEVY A ROOM OCCUPANCY AND TOURISM DEVELOPMENT TAX.

The General Assembly of North Carolina enacts:

Section 1. Levy of Tax. (a) The Board of Commissioners of Johnston County may by resolution, after not less than 10 days' public notice levy a room occupancy and tourism development tax.

(b) Collection of the tax, and liability therefor, shall begin and continue only on and after the first day of a calendar month set by the board of county commissioners in the resolution levying the tax, which in no case may be earlier than the first day of the second succeeding calendar month after the date of adoption of the resolution.

Sec. 2. Rate of Tax. The room occupancy and tourism development tax that may be levied under this act shall be three percent (3%) of the gross receipts derived from the rental of any room, lodging, or similar accommodation furnished by any hotel, motel, inn, or other similar enterprise within the county now subject to sales tax imposed by the State under G.S. 105-164.4(3). This tax is in addition to any local sales tax.

Sec. 3. Exemptions. The tax authorized by this act does not apply to gross receipts derived by the following entities from accommodations furnished by them:

- (1) religious organizations;
- (2) a business that offers to rent to fewer than five units;
- (3) educational organizations;
- (4) summer camps;
- (5) campgrounds; and
- (6) rooming or boarding houses.

Sec. 4. Administration of Tax. (a) Any tax levied under this act is due and payable to the county in monthly installments on or before the 15th day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the 15th day of each month, prepare and render a return on a form prescribed by Johnston County. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied.

(b) Any person, firm, corporation, or association failing or refusing to file the return required by this act shall pay a penalty of ten dollars (\$10.00) for each day's omission.

(c) In case of failure or refusal to file the return or pay the tax for a period of 30 days after the time required for filing the return or for paying the tax, there shall be an additional tax, as a penalty, of five percent (5%) of the tax due, in addition to the penalty prescribed in subsection (b), with an additional tax of five percent (5%) for each additional month or fraction thereof until the occupancy tax is paid.

(d) Any person who willfully attempts in any manner to evade the tax imposed by this act or to make a return or who willfully fails to pay the tax or make and file a return shall, in addition to all other penalties provided by law, be guilty of a misdemeanor and shall be punishable by a fine not to exceed one thousand dollars (\$1,000), imprisonment not to exceed six months, or both.

Sec. 5. Collection of Tax. Every operator of a business subject to the tax levied by this act shall, on and after the effective date of the levy of the tax, collect the three percent (3%) tax. This tax shall be collected as part of the charge for the furnishing of any taxable accommodations. The tax shall be stated and charged separately from the sales records, and shall be paid by the purchaser to the operator of the business as trustee for and on account of Johnston County. The tax levied pursuant to this act shall be added to the sales price and shall be passed on to the purchaser instead of being borne by the operator of the business. The county shall design, print, and furnish to all affected businesses in Johnston County the necessary forms for filing returns and instructions to ensure the collection of the tax.

An operator of a business who collects the occupancy tax levied under this section and submits the proceeds of the tax to the county on time, may deduct from the amount remitted to the county a discount of three percent (3%) of the amount collected.

Sec. 6. Disposition of Taxes Collected. (a) For the first two years in which a tax is levied under this act, Johnston County may, in the discretion of the County Commissioners, remit up to fifty percent (50%) of the net proceeds to the Johnston Technical College Auditorium Fund. Johnston County shall remit the remainder of the net proceeds of the occupancy tax to the Johnston County Tourism Authority. During the remaining years in which a tax is levied under this act, Johnston County shall remit the entire net proceeds of the occupancy tax to the Johnston County Tourism Authority. "Net proceeds" means gross proceeds less the cost to the county of administering and collecting the tax, not to exceed five percent (5%) of the gross proceeds of the tax.

(b) The Johnston County Tourism Authority may remit proceeds of the tax from each affected establishment to the following organizations in the towns from which the occupancy tax was collected. Boundaries will be established as follows:

- (1) Proceeds of the tax from affected establishments located in Beulah and Micro townships may be remitted by the Johnston County Tourism Authority to the Kenly Chamber of Commerce.

- (2) Proceeds of the tax from affected establishments located in Smithfield, Selma, Wilson's Mills, and Pine Level townships may be remitted by the Johnston County Tourism Authority to the Greater Smithfield-Selma Area Chamber of Commerce.
 - (3) Proceeds of the tax from affected establishments located in Ingrams township may be remitted by the Johnston County Tourism Authority to the Four Oaks Chamber of Commerce.
 - (4) Proceeds of the tax from affected establishments located in Banner and Elevation townships may be remitted by the Johnston County Tourism Authority to the Benson Chamber of Commerce.
 - (5) Proceeds of the tax from affected establishments located in Clayton and Cleveland townships may be remitted by the Johnston County Tourism Authority to the Clayton Chamber of Commerce.
 - (6) If and when establishments affected by this act are located in Boon Hill, Bentonville, Meadow, Pleasant Grove, Wilders, and O'Neals townships, the Johnston County Tourism Authority shall have the authority to determine what organization in Johnston County shall receive the proceeds of the tax.
- (c) The Johnston County Tourism Authority may retain up to one percent (1%) of the net proceeds allocated to it by Johnston County to cover administrative costs.
- (d) The organizations receiving allocations of the occupancy tax revenue remitted to it by the Johnston County Tourism Authority shall use the revenue for the following purposes:
- (1) Direct advertising costs for visitor promotions, conventions, or tourism, including outdoor advertising, print media, broadcast media, and brochures;
 - (2) Marketing and promotions expenses, including test market programs, consultant fees, entertainment, housing expenses, travel expenses, and registration fees;
 - (3) Operating expenses for tourist-oriented events;
 - (4) Administrative expenses;
 - (5) Tourist-related capital projects in Johnston County;
 - (6) Other expenses that aid and encourage visitor promotions, conventions or tourism; and
 - (7) Any additional administrative costs incurred by the county.
- (e) The organizations receiving allocations of the occupancy tax revenue remitted to them by the Johnston County Tourism Authority may contract with appropriate organizations or agencies to assist them in carrying out the above purposes.

Sec. 7. Appointment. Duties of the Johnston County Tourism Authority. (a) When the Board of County Commissioners adopts a resolution levying a room occupancy tax pursuant to this act, it shall also adopt a resolution creating the Johnston County Tourism Authority, which shall be a public authority under the Local Government Budget and Fiscal Control Act and shall be composed of the following members:

- (1) One representative to be appointed by the Benson Chamber of Commerce;
- (2) One representative to be appointed by the Clayton Chamber of Commerce;
- (3) One representative to be appointed by the Four Oaks Chamber of Commerce;
- (4) One representative to be appointed by the Kenly Chamber of Commerce;
- (5) One representative to be appointed by the Greater Smithfield-Selma Area Chamber of Commerce;
- (6) One owner or operator of a hotel, motel, or other taxable tourist accommodation, to be appointed by the County Commissioners;
- (7) Four individuals involved in the tourist business who have demonstrated an interest in tourist development and do not own or operate a hotel, motel, or other taxable tourist accommodation, to be appointed by the County Commissioners;
- (8) The finance officer of Johnston County, who shall serve as treasurer, will be a nonvoting, ex officio member.

(b) All members of the Authority shall serve without compensation. Vacancies on the Authority shall be filled by the appointing organization of the member creating the vacancy. Members appointed to fill vacancies shall serve for the remainder of the unexpired term for which they are appointed to fill. Members shall serve three-year terms, except the initial members who shall serve the following terms:

- (1) Members appointed pursuant to subdivisions (a)(1) - (1)(5) shall serve a one-year term;
 - (2) Members appointed pursuant to subdivision (a)(6) shall serve a two-year term;
 - (3) Members appointed pursuant to subdivision (a)(7) shall serve a three-year term.
- (c) Members may serve no more than two consecutive three-year terms. The members shall elect a chairman, who shall serve for a term of two years. The Authority shall meet at the call of the chairman and shall adopt rules of procedure to govern its meetings.

(d) The Johnston County Tourism Authority shall have the responsibility to ensure that all organizations receiving allocations of the occupancy tax are utilizing the revenues pursuant to Section 6(d) of this act. Each organization receiving allocations from the occupancy tax shall report its uses of the tax revenue, including financial reports, to the Authority.

(e) The Johnston County Tourism Authority shall report at the close of each fiscal year to the Board of County Commissioners on receipts and expenditures of the occupancy tax revenues for the year in such detail as the Board may require. The Authority's fiscal year shall be the same as that of the county.

(f) The Authority shall meet at the call of the chairman and shall adopt rules of procedure to govern its meetings. The Authority shall meet at least quarterly.

Sec. 8. Repeal of Levy. (a) The Board of County Commissioners may by resolution repeal the levy of the room occupancy tax in Johnston County, but no repeal of taxes levied under this act shall be effective until the end of the fiscal year in which the repeal resolution was adopted.

(b) No liability for any tax levied under this act that attached prior to the date on which a levy is repealed is discharged as a result of the repeal, and no right to a refund of a tax that accrued prior to the effective date on which a levy is repealed may be denied as a result of the repeal.

Sec. 9. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 20th day of July, 1987.

S.B. 455

CHAPTER 648

AN ACT TO INCORPORATE THE TOWN OF SAWMILLS, AND
PROVIDE FOR THE SIMULTANEOUS DISSOLUTION OF
THE SAW MILL SANITARY DISTRICT, SUBJECT TO A
REFERENDUM.

The General Assembly of North Carolina enacts:

Section 1. In accordance with G.S. 130A-81(1), the Town of Sawmills is incorporated and the Saw Mill Sanitary District is simultaneously dissolved.

Sec. 2. A Charter for the Town of Sawmills is enacted to read:

"CHARTER OF THE TOWN OF SAWMILLS.

"Chapter I.

"Incorporation and Corporate Powers.

"Section 1.1. Incorporation and corporate powers. The inhabitants of the Town of Sawmills are a body corporate and politic under the

name 'Town of Sawmills'. Under that name they have all the powers, duties, rights, privileges, and immunities conferred and imposed upon cities by the general law of North Carolina.

"Chapter II.

"Corporate Boundaries.

"Sec. 2.1. Town boundaries. Until modified in accordance with law, the boundaries of the Town of Sawmills are as follows:

All the area included within the boundaries of all that tract or parcel of land in Lovelady Township, Caldwell County, particularly described as follows:

Beginning at an x mark chopped in the center line of the pavement of U.S. Highway 321-A the said point being located in the center of a bridge running over Little Gunpowder Creek, said x mark also being a point in the Southern Corporate limits of the Town of Hudson, North Carolina and running thence from said beginning point North 74 degrees 30 minutes 00 seconds East, 2,517.30 feet to a concrete monument located in the existing Saw Mill Sanitary Districe line; thence with the old Saw Mill Sanitary District line, the following courses and distances, all being to and from concrete monuments;

| | |
|--|---------------|
| South 29 degrees 20 minutes 00 seconds East, | 3,866.00 feet |
| South 64 degrees 41 minutes 00 seconds East, | 92.00 feet |
| South 70 degrees 21 minutes 00 seconds East, | 236.39 feet |
| South 70 degrees 21 minutes 00 seconds East, | 460.17 feet |
| South 59 degrees 43 minutes 30 seconds East, | 459.11 feet |
| South 18 degrees 59 minutes 00 seconds East, | 66.00 feet |
| South 30 degrees 41 minutes 00 seconds West, | 72.40 feet |
| South 72 degrees 06 minutes 30 seconds West, | 187.21 feet |
| North 85 degrees 00 minutes 00 seconds West, | 667.71 feet |
| North 3 degrees 14 minutes 00 seconds East, | 152.40 feet |
| North 71 degrees 46 minutes 00 seconds West, | 88.75 feet |
| South 1 degrees 41 minutes 00 seconds East, | 2,239.53 feet |
| South 84 degrees 58 minutes 21 seconds East, | 649.87 feet |
| South 0 degrees 22 minutes 57 seconds East, | 198.67 feet |
| South 5 degrees 59 minutes 00 seconds West, | 737.00 feet |
| North 77 degrees 28 minutes 00 seconds West, | 577.80 feet |
| South 1 degrees 41 minutes 00 seconds East, | 2,338.10 feet |
| South 72 degrees 28 minutes 00 seconds East, | 179.70 feet |
| South 72 degrees 34 minutes 00 seconds East, | 380.20 feet |
| South 70 degrees 30 minutes 30 seconds East, | 170.10 feet |
| South 62 degrees 24 minutes 30 seconds East, | 132.15 feet |
| South 59 degrees 52 minutes 30 seconds East, | 382.50 feet |
| South 60 degrees 13 minutes 00 seconds East, | 188.86 feet |
| South 60 degrees 13 minutes 00 seconds East, | 550.10 feet |

To a concrete monument on the East side of U.S. Hwy. 321A thence crossing U.S. Highway 321A

South 15 degrees 17 minutes 00 seconds West 77.35 feet
to a concrete monument in the center of the Carolina and Northwestern Railroad track; thence with the center of the Carolina and Northwestern Railroad track South 59 degrees 28 minutes 00 seconds East, 104.55 feet to a concrete monument in the center of the Carolina and Northwestern Railroad track; thence still with the old Saw Mill Sanitary District line, the following courses and distances, all being to and from concrete monuments;

| | |
|--|---------------|
| South 33 degrees 01 minutes 00 seconds West, | 323.00 feet |
| North 83 degrees 31 minutes 00 seconds West, | 440.00 feet |
| North 87 degrees 07 minutes 25 seconds West, | 298.04 feet |
| South 5 degrees 38 minutes 00 seconds West, | 1,530.00 feet |
| South 82 degrees 30 minutes 00 seconds West, | 60.50 feet |
| South 78 degrees 30 minutes 00 seconds West, | 198.00 feet |
| South 70 degrees 30 minutes 00 seconds West, | 478.50 feet |
| North 36 degrees 05 minutes 00 seconds West, | 1,019.40 feet |
| South 14 degrees 04 minutes 00 seconds West, | 3,747.90 feet |

to a P.K. nail set in the center line of the pavement of Caldwell County S.R. Road 1115, a corner in the old Saw Mill Sanitary District boundary line; thence with the old Waw Mill Sanitary District line, the following courses and distances all being to and from concrete monuments;

| | |
|--|---------------|
| North 87 degrees 07 minutes 00 seconds West, | 1,478.00 feet |
| South 3 degrees 14 minutes 00 seconds West, | 1,900.00 feet |
| North 71 degrees 24 minutes 00 seconds West, | 1,500.00 feet |
| North 59 degrees 03 minutes 00 seconds West, | 1,195.00 feet |
| South 85 degrees 57 minutes 00 seconds West, | 351.95 feet |
| South 8 degrees 46 minutes 00 seconds West, | 670.00 feet |
| North 75 degrees 54 minutes 00 seconds West, | 355.00 feet |
| South 30 degrees 34 minutes 30 seconds West, | 24.39 feet |
| South 25 degrees 11 minutes 00 seconds West, | 881.53 feet |
| North 86 degrees 33 minutes 30 seconds West, | 514.07 feet |
| North 19 degrees 34 minutes 00 seconds West, | 1,032.75 feet |
| North 81 degrees 29 minutes 00 seconds West, | 208.79 feet |
| North 28 degrees 40 minutes 00 seconds East, | 439.93 feet |
| North 84 degrees 51 minutes 00 seconds East, | 623.31 feet |
| North 86 degrees 26 minutes 30 seconds East, | 879.39 feet |
| North 6 degrees 48 minutes 30 seconds East, | 10.83 feet |
| North 83 degrees 07 minutes 00 seconds East, | 186.00 feet |
| North 6 degrees 03 minutes 00 seconds East, | 993.70 feet |
| South 85 degrees 54 minutes 00 seconds West, | 1,642.50 feet |
| South 0 degrees 24 minutes 00 seconds East, | 20.60 feet |

South 16 degrees 48 minutes 30 seconds West, 94.88 feet
 South 65 degrees 54 minutes 00 seconds West, 1,100.46 feet
 South 2 degrees 55 minutes 00 seconds West, 792.09 feet
 North 83 degrees 59 minutes 00 seconds West, 564.10 feet
 North 2 degrees 20 minutes 00 seconds East, 276.44 feet
 North 85 degrees 35 minutes 00 seconds West, 396.34 feet
 North 1 degree 02 minutes 00 seconds West, 290.57 feet
 to a P.K. nail set in the center line of the pavement of Caldwell
 County S.R. Road 1115, a corner in the old Saw Mill Sanitary
 District boundary line; thence with the old Saw Mill Sanitary District
 line and the center line of Caldwell County S.R. Road 1115, the
 following courses and distances all being to and from P.K. nails:
 North 80 degrees 33 minutes 00 seconds East, 200.06 feet
 North 74 degrees 40 minutes 30 seconds East, 100.03 feet
 North 64 degrees 48 minutes 30 seconds East, 100.02 feet
 North 53 degrees 48 minutes 00 seconds East, 100.02 feet
 North 46 degrees 18 minutes 00 seconds East, 100.01 feet
 North 43 degrees 47 minutes 00 seconds East, 500.05 feet
 North 43 degrees 46 minutes 00 seconds East, 400.04 feet
 North 45 degrees 35 minutes 00 seconds East, 100.01 feet
 North 51 degrees 15 minutes 00 seconds East, 100.02 feet
 North 57 degrees 28 minutes 00 seconds East, 100.02 feet
 North 61 degrees 08 minutes 30 seconds East, 100.02 feet
 North 63 degrees 14 minutes 30 seconds East, 100.02 feet
 North 65 degrees 07 minutes 30 seconds East, 58.24 feet
 to a P.K. nail set in the center line of the pavement of Caldwell
 County S.R. Road 1115, a corner in the old Saw Mill Sanitary
 District boundary line; thence with the old Saw Mill Sanitary District
 line the following courses and distances, all being to and from
 concrete monuments;
 North 28 degrees 05 minutes 30 seconds West, 287.77 feet
 North 68 degrees 04 minutes 00 seconds East, 232.75 feet
 North 12 degrees 16 minutes 00 seconds West, 244.11 feet
 North 19 degrees 57 minutes 00 seconds East, 510.30 feet
 South 88 degrees 51 minutes 00 seconds East, 803.80 feet
 North 18 degrees 19 minutes 00 seconds West, 2,100.00 feet
 South 52 degrees 14 minutes 00 seconds West, 1,510.00 feet
 South 80 degrees 05 minutes 00 seconds West, 1,443.20 feet
 North 83 degrees 35 minutes 00 seconds West, 663.62 feet
 North 1 degree 54 minutes 00 seconds East, 197.50 feet
 THENCE North 2 degrees 49 minutes 00 seconds East crossing
 Caldwell County S.R. Road 1123 443.30 feet to a concrete monument
 an old corner in the Old Saw Mill Sanitary District boundary line;
 thence still with the old Saw Mill Sanitary District line the following

courses and distances, all being to and from concrete monuments;

| | |
|--|---------------|
| South 84 degrees 22 minutes 00 seconds East, | 281.50 feet |
| North 56 degrees 08 minutes 00 seconds East, | 50.40 feet |
| North 46 degrees 27 minutes 00 seconds East, | 189.50 feet |
| North 83 degrees 17 minutes 00 seconds East, | 240.10 feet |
| North 49 degrees 18 minutes 00 seconds West, | 115.40 feet |
| North 8 degrees 22 minutes 00 seconds East, | 791.00 feet |
| North 21 degrees 43 minutes 00 seconds East, | 130.00 feet |
| North 53 degrees 05 minutes 00 seconds East, | 157.50 feet |
| North 53 degrees 14 minutes 00 seconds East, | 361.40 feet |
| North 10 degrees 24 minutes 00 seconds East, | 428.10 feet |
| North 46 degrees 49 minutes 00 seconds East, | 437.60 feet |
| North 4 degrees 33 minutes 00 seconds East, | 95.30 feet |
| North 6 degrees 54 minutes 00 seconds East, | 100.00 feet |
| North 5 degrees 22 minutes 00 seconds East, | 200.00 feet |
| North 3 degrees 52 minutes 00 seconds East, | 120.00 feet |
| North 85 degrees 43 minutes 00 seconds West, | 213.60 feet |
| North 2 degrees 30 minutes 00 seconds East, | 808.60 feet |
| North 85 degrees 17 minutes 00 seconds East, | 625.00 feet |
| South 75 degrees 46 minutes 00 seconds East, | 54.70 feet |
| North 13 degrees 46 minutes 00 seconds West, | 334.00 feet |
| North 15 degrees 05 minutes 00 seconds East, | 200.20 feet |
| North 12 degrees 17 minutes 00 seconds East, | 338.90 feet |
| North 14 degrees 51 minutes 00 seconds East, | 270.60 feet |
| North 12 degrees 46 minutes 00 seconds East, | 723.80 feet |
| North 82 degrees 46 minutes 00 seconds West, | 132.20 feet |
| North 65 degrees 40 minutes 00 seconds West, | 197.20 feet |
| North 63 degrees 29 minutes 00 seconds West, | 250.00 feet |
| South 38 degrees 09 minutes 00 seconds West, | 36.70 feet |
| North 84 degrees 36 minutes 00 seconds West, | 199.00 feet |
| North 6 degrees 22 minutes 00 seconds East, | 135.20 feet |
| South 85 degrees 59 minutes 00 seconds West, | 352.20 feet |
| South 4 degrees 54 minutes 00 seconds East, | 112.10 feet |
| South 59 degrees 54 minutes 00 seconds West, | 310.70 feet |
| North 72 degrees 52 minutes 00 seconds West, | 412.10 feet |
| South 3 degrees 07 minutes 00 seconds East, | 239.80 feet |
| South 78 degrees 11 minutes 00 seconds West, | 915.75 feet |
| South 3 degrees 11 minutes 00 seconds West, | 198.00 feet |
| South 50 degrees 11 minutes 00 seconds West, | 2,211.00 feet |
| North 59 degrees 28 minutes 00 seconds West, | 509.46 feet |
| North 3 degrees 11 minutes 00 seconds East, | 66.00 feet |
| North 39 degrees 19 minutes 00 seconds West, | 198.00 feet |
| North 78 degrees 19 minutes 00 seconds West, | 132.00 feet |

| | |
|--|---------------|
| North 48 degrees 19 minutes 00 seconds West, | 280.10 feet |
| North 29 degrees 19 minutes 00 seconds West, | 511.50 feet |
| North 7 degrees 02 minutes 00 seconds East, | 1,751.09 feet |
| South 82 degrees 19 minutes 00 seconds East, | 1,073.00 feet |
| South 7 degrees 41 minutes 00 seconds West, | 188.00 feet |
| South 7 degrees 41 minutes 00 seconds West, | 60.00 feet |
| North 82 degrees 19 minutes 00 seconds West, | 480.00 feet |
| South 7 degrees 41 minutes 00 seconds West, | 188.00 feet |
| South 82 degrees 19 minutes 00 seconds East, | 480.00 feet |
| North 7 degrees 41 minutes 00 seconds East, | 248.00 feet |
| South 82 degrees 19 minutes 00 seconds East, | 795.00 feet |
| South 7 degrees 41 minutes 00 seconds West, | 248.00 feet |
| South 82 degrees 19 minutes 00 seconds East, | 320.00 feet |
| North 7 degrees 41 minutes 00 seconds East, | 188.00 feet |
| North 82 degrees 19 minutes 00 seconds West, | 272.00 feet |
| North 7 degrees 41 minutes 00 seconds East, | 248.00 feet |
| South 82 degrees 19 minutes 00 seconds East, | 780.52 feet |
| South 3 degrees 11 minutes 00 seconds West, | 405.00 feet |
| South 82 degrees 19 minutes 00 seconds East, | 84.50 feet |
| North 7 degrees 41 minutes 00 seconds East, | 50.00 feet |
| South 82 degrees 19 minutes 00 seconds East, | 500.00 feet |
| North 7 degrees 41 minutes 00 seconds East, | 70.00 feet |
| South 86 degrees 49 minutes 00 seconds East, | 231.00 feet |
| to a P.K. nail set in the center line of the pavement of Caldwell County S.R. Road 1127, (Horseshoe Bend Road) a corner in the old Saw Mill Sanitary District boundary line; thence with the old Saw Mill Sanitary District line and the center line of Caldwell County S.R. 1127 (Horseshoe Bend Road) the following courses and distances, all being to and from P.K. nails: | |
| South 0 degrees 10 minutes 00 seconds East, | 3.20 feet |
| North 27 degrees 17 minutes 00 seconds West, | 300.00 feet |
| North 22 degrees 39 minutes 00 seconds West, | 100.30 feet |
| North 15 degrees 39 minutes 00 seconds West, | 100.00 feet |
| North 12 degrees 46 minutes 00 seconds West, | 100.00 feet |
| North 10 degrees 00 minutes 00 seconds West, | 399.40 feet |
| North 16 degrees 20 minutes 00 seconds West, | 409.62 feet |
| North 11 degrees 28 minutes 00 seconds West, | 200.00 feet |
| to a P.K. nail set in the center line of the pavement of Caldwell County S.R. Road 1127, (Horseshoe Bend Road) a corner in the old Saw Mill Sanitary District line; thence still with the old Saw Mill Sanitary District line, the following courses and distances all being to and from concrete monuments: | |
| South 78 degrees 42 minutes 00 seconds West, | 156.70 feet |
| South 79 degrees 52 minutes 00 seconds West, | 153.10 feet |

| | |
|--|---------------|
| North 1 degree 00 minutes 00 seconds West, | 281.65 feet |
| South 69 degrees 58 minutes 00 seconds West, | 201.40 feet |
| North 5 degree 04 minutes 00 seconds East, | 121.80 feet |
| North 14 degrees 04 minutes 00 seconds East, | 66.60 feet |
| North 4 degree 34 minutes 00 seconds East, | 169.70 feet |
| North 1 degree 57 minutes 00 seconds East, | 226.43 feet |
| North 0 degree 09 minutes 00 seconds West, | 128.80 feet |
| North 77 degrees 17 minutes 00 seconds West, | 258.56 feet |
| North 1 degree 07 minutes 00 seconds East, | 17.40 feet |
| North 84 degrees 19 minutes 00 seconds West, | 796.40 feet |
| South 25 degrees 19 minutes 00 seconds West, | 35.54 feet |
| South 76 degrees 35 minutes 00 seconds West, | 431.63 feet |
| North 3 degrees 38 minutes 00 seconds East, | 608.35 feet |
| North 11 degrees 33 minutes 00 seconds East, | 90.14 feet |
| North 4 degrees 57 minutes 00 seconds East, | 153.60 feet |
| South 79 degrees 55 minutes 00 seconds West, | 363.00 feet |
| North 6 degree 40 minutes 00 seconds East, | 862.42 feet |
| to a concrete monument in the Hudson corporate limits; thence with the Hudson corporate limits | |
| South 87 degrees 21 minutes 30 seconds East, | 1,929.38 feet |
| South 66 degrees 54 minutes 00 seconds East, | 197.80 feet |
| South 68 degrees 29 minutes 00 seconds East, | 728.05 feet |
| South 6 degree 47 minutes 00 seconds West, | 238.80 feet |
| North 87 degrees 07 minutes 00 seconds East, | 524.60 feet |
| North 6 degrees 15 minutes 00 seconds East, | 222.60 feet |
| South 83 degrees 44 minutes 00 seconds East, | 699.00 feet |
| South 69 degrees 03 minutes 00 seconds East, | 402.95 feet |
| North 4 degrees 25 minutes 00 seconds East, | 267.30 feet |
| North 9 degrees 37 minutes 00 seconds East, | 217.30 feet |
| North 11 degrees 55 minutes 00 seconds East, | 182.00 feet |
| North 36 degrees 28 minutes 00 seconds East, | 16.04 feet |
| North 26 degrees 52 minutes 00 seconds East, | 224.30 feet |
| North 29 degrees 29 minutes 00 seconds East, | 118.80 feet |
| North 74 degrees 26 minutes 00 seconds East, | 117.50 feet |
| South 74 degrees 28 minutes 00 seconds East, | 160.00 feet |
| North 87 degrees 21 minutes 00 seconds East, | 171.70 feet |
| North 80 degrees 41 minutes 00 seconds East, | 117.20 feet |
| North 31 degrees 50 minutes 00 seconds East, | 131.50 feet |
| North 7 degrees 52 minutes 00 seconds East, | 102.20 feet |
| North 75 degrees 32 minutes 00 seconds East, | 2,680.70 feet |
| to the point of beginning. | |

"Chapter III.

"Governing Body.

"Sec. 3.1. Structure of governing body; number of members.

The governing body of the Town of Sawmills is the Town Council, which has a Mayor and five members.

"Sec. 3.2. Manner of electing board. The qualified voters of the entire Town nominate and elect all the members of the Council.

"Sec. 3.3. Term of office of Council members. In the 1989 municipal election five council members shall be elected. The two persons receiving the highest numbers of votes shall be elected for four-year terms, and the three persons receiving the next highest numbers of votes shall be elected for two-year terms. In 1991 and quadrennially thereafter, three council members shall be elected for four-year terms. In 1993 and quadrennially thereafter, two council members shall be elected for four-year terms.

"Sec. 3.4. Selection of Mayor; term of office. The qualified voters of the entire Town nominate and elect the Mayor in 1989 and quadrennially thereafter for a four-year term.

"Sec. 3.5. Filling of vacancies. Vacancies occurring for any reason in the Town Council shall be filled by the remaining members of the Council for the remainder of the unexpired term.

"Chapter IV.

"Elections.

"Sec. 4.1. Conduct of Town elections. The Mayor and Town Council shall be elected on a nonpartisan basis and the results determined by the primary and election method as provided by G.S. 163-294.

"Chapter V.

"Administration.

"Sec. 5.1. Mayor-Council plan. The Town of Sawmills operates under the Mayor-Council plan as provided by Part 3 of Article 7 of Chapter 160A of the General Statutes."

"Chapter VI

"Extraterritorial Jurisdiction.

"Sec. 6.1. Extraterritorial jurisdiction. The Town may exercise any extraterritorial jurisdiction or extraterritorial powers under Article 19 of Chapter 160A of the General Statutes."

Sec. 2. The initial members of the Town Council shall be those persons serving as the Board of Commissioners of the Saw Mill Sanitary District on June 30, 1988. They shall serve until their successors are elected and qualified pursuant to this act. They shall appoint one of their members as Mayor, who shall serve until his successor is elected under this act.

Sec. 3. On July 1, 1988, the Saw Mill Sanitary District shall cease to exist as a body politic and corporate, and the Town of Sawmills shall simultaneously be incorporated, and at that time all of the District's assets and liabilities shall be transferred to the Town of

Sawmills as provided in G.S. 130A-81.

Sec. 4. The Saw Mill Sanitary District shall take all actions necessary to effect this transfer of the assets and liabilities of the District to the Town of Sawmills by June 30, 1988.

Sec. 5. From and after July 1, 1988, the citizens and property in the Town of Sawmills shall be subject to municipal taxes levied for the fiscal year beginning July 1, 1988, and the Town shall obtain from the County a record of property in the area herein incorporated which was listed for taxes as of January 1, 1988, and the businesses in the Town shall be liable for privilege license tax from the date of the privilege license tax ordinance.

Sec. 6. Notwithstanding the provisions of the general laws of North Carolina and any provisions of this act to the contrary, the Town Council may adopt a budget ordinance for the 1988-89 fiscal year, following their qualification for office, without having to comply with the budget preparation and adoption timetable set out in the Local Government Budget and Fiscal Control Act. The Town Council may, not later than September 15, 1988, adopt an ad valorem tax on real and personal property for the 1988-89 fiscal year, and such taxes may be paid at par or face amount within the period of time from September 15, 1988, through January 6, 1989, and thereafter in accordance with the schedule in G.S. 105-360 as if such taxes had been due on September 1, 1988.

Sec. 7. The organizational meeting of the Town Council of the Town of Sawmills shall be held on July 1, 1988, at 7:00 P.M.

Sec. 8. The Caldwell County Board of Elections shall call and conduct a referendum on the Tuesday after the first Monday in November 1987, to submit to the qualified voters in the area described in Section 1 of this act the question whether such area shall be simultaneously dissolved as a sanitary district and incorporated as a municipal corporation known as the Town of Sawmills.

A registration of voters within the area shall be held in accordance with G.S. 163-288.2. The registration records shall be open for the period set out in G.S. 163-288.2. The referendum shall be conducted in accordance with G.S. 130A-81 and the provisions of this act.

The question on the ballot shall be as follows:

- ☐ FOR Incorporation of the Town of Sawmills and the simultaneous dissolution of the Saw Mill Sanitary District.
- ☐ AGAINST Incorporation of the Town of Sawmills and the simultaneous dissolution of the Saw Mill Sanitary District.

If a majority of those voting in the referendum vote in favor of incorporating the Town of Sawmills and dissolving the Saw Mill Sanitary District, then the Town of Sawmills shall be incorporated and the Saw Mill Sanitary District shall be simultaneously dissolved on the date and time set forth in Section 3 of this act. Sections 1 through 7 of this act shall be in full force and effect, the transitional provisions of G.S. 130A-81(5) a. through g. shall apply to the Town of Sawmills and the Saw Mill Sanitary District. If a majority of those voting in the referendum do not vote for incorporating the Town of Sawmills and dissolving the Saw Mill Sanitary District, then Sections 1 through 7 of this act shall have no force and effect.

Sec. 9. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 21st day of July, 1987.

S.B. 553

CHAPTER 649

AN ACT AUTHORIZING THE ADJUTANT GENERAL TO
APPOINT MILITARY JUDGES TO PRESIDE OVER COURTS-
MARTIAL OF THE NATIONAL GUARD NOT IN FEDERAL
SERVICE.

The General Assembly of North Carolina enacts:

Section 1. Chapter 127A of the General Statutes is amended by adding a new section to read:

"§ 127A-50.1. *Military judges.*--The Adjutant General shall appoint military judges to preside over courts-martial of the National Guard not in federal service. Minimum requirements for appointment as a military judge shall be:

(1) Licensed to practice law in this State or certified as a military judge by the Judge Advocate General of the Army, Air Force, Navy, or Marines;

(2) Designation as a judge advocate by The Judge Advocate General of the Army, Navy, Air Force, or Marines; and

(3) Membership in the North Carolina National Guard, the National Guard of another state, or the active or reserve components of any of the military services."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 21st day of July, 1987.

AN ACT AUTHORIZING THE STATE AND LOCAL GOVERNMENTAL UNITS AND ALL AGENCIES AND INSTRUMENTALITIES OF EITHER TO ISSUE CAPITAL APPRECIATION REVENUE, SPECIAL OBLIGATION AND GENERAL OBLIGATION BONDS, THE PROCEEDS OF WHICH MAY BE USED BY THE PURCHASER FOR HIGHER EDUCATION AND OTHER NEEDS.

The General Assembly of North Carolina enacts:

Section 1. It is hereby found, determined, and declared that:

1. From time to time it may be advantageous for the State and The University of North Carolina, and any agency and instrumentality of either thereof (the "State") and any county, city, town, special district, authority or other political subdivision and any agency and local instrumentality of any thereof ("local governmental unit") to issue revenue, special obligation and general obligation bonds at a substantial discount ("capital appreciation bonds" as hereinafter defined) and on which all or a portion of the interest thereon is deferred and paid at the maturity or redemption thereof;

2. Capital appreciation bonds are sometimes known as zero coupon bonds, compound interest bonds, municipal multiplier bonds, capital accumulator bonds and, as such, are sometimes attractive to purchasers thereof in that the value of capital appreciation bonds will increase over the years, based upon an internal compounding of interest, in whole or in part, without requiring an owner thereof to reinvest any such interest so compounded;

3. The purchase of capital appreciation bonds may assist parents in paying the cost of higher education for children which will occur at a time substantially in the future; and

4. It is desirable to facilitate the issuance and purchase of capital appreciation bonds in circumstances where it is in the best interests of the State and local governmental units and the inhabitants thereof.

Sec. 2. The State and local governmental units are hereby authorized to issue capital appreciation bonds pursuant to the provisions of The State and Local Government Revenue Bond Act and to the extent that the provisions of said act are inconsistent with the issuance of such bonds, such inconsistent provisions are hereby amended to the extent of such inconsistency so as to permit the issuance of such bonds.

Sec. 3. Local governmental units are hereby authorized to issue capital appreciation bonds pursuant to the provisions of The Local Government Bond Act and to the extent that the provisions of said act

are inconsistent with the issuance of such bonds, such inconsistent provisions are hereby amended to the extent of such inconsistency so as to permit the issuance of such bonds.

Sec. 4. The State is hereby authorized to issue capital appreciation bonds pursuant to the provisions of applicable law and to the extent that the provisions of such law are inconsistent with the issuance of such bonds, such inconsistent provisions are hereby amended to the extent of such inconsistency so as to permit the issuance of such bonds.

Sec. 5. The State and local governmental units are hereby authorized to issue capital appreciation bonds pursuant to the provisions of any law hereafter enacted, including laws enacted at the same session of the General Assembly at which this act is enacted, and to the extent that the provisions of such laws are inconsistent with the issuance of such bonds and provided such provisions are not expressly contrary, such inconsistent provisions are hereby amended to the extent of such inconsistency so as to permit the issuance of such bonds.

Sec. 6. For purposes of this act, the term "capital appreciation bonds" means any bond or bonds sold, at public or private sale, at a price substantially less, as conclusively determined by the issuer thereof, than the principal amount thereof and compounded interest thereon payable at maturity, but only if such bond or bonds are designated as capital appreciation bonds within the meaning of this act by the proceedings of the issuer thereof providing for the issuance of such bonds. For purposes of calculating the aggregate principal amount of bonds within the meaning of any constitutional or statutory limitation on the incurrence of debt, the aggregate principal amount of any capital appreciation bonds shall be the aggregate of the initial offering prices at which such bonds are offered for sale to the public, including private or negotiated sales, or sold to the initial purchaser thereof in a private placement, in either case without reduction to reflect underwriters' discount or placement agents' or other intermediaries' fees.

The proceedings providing for the issuance of any such bonds may provide for the issuance of terms bonds or serial bonds, or both, the establishment of sinking funds for or the redemption of term bonds, the issuance of capital appreciation bonds at the same time and as part of the same issue of any other type of bonds, the method of calculating the principal amount of any such capital appreciation bonds outstanding for the purpose of determining, within the meaning of such proceedings and otherwise, application of debt service provisions, funds into which debt service payments are to be deposited, application of redemption provisions, bondowners' voting rights and consents, pro

rata application of available funds and such other matters as may be deemed appropriate by the issuer.

Sec. 7. In connection with the issuance of a series of bonds containing capital appreciation bonds issued by local governmental units pursuant to The Local Government Bond Act, the Local Government Commission is hereby authorized to require that annual debt service on such series of bonds be as nearly level or equal as possible taking into consideration prevailing financial techniques, including, without limitation, the postponement of principal maturities in early years of the issue and the use of capitalized interest. The Local Government Commission is hereby further authorized to limit the amount of a series of bonds that may be issued as capital appreciation bonds and to make the issuance of any such capital appreciation bonds subject to a finding by the Commission or the issuer that the issuance of such bonds will not increase the aggregate amount of debt service payable on such series of bonds of which such capital appreciation bonds constitute a part.

Sec. 8. If, and to the extent that, the State or any local governmental unit is empowered to issue capital appreciation bonds under existing law, the provisions of this act shall be deemed to provide an additional and alternative method for the issuance of such bonds and shall be regarded as supplemental and additional to such power conferred under existing law, and shall not be regarded as in derogation of any power now existing.

Sec. 9. If the provisions of this act are inconsistent with the provisions of any existing law, the provisions of this act shall be controlling.

Sec. 10. If any provision of this act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of this act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

Sec. 11. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 21st day of July, 1987.

S.B. 821

CHAPTER 651

AN ACT TO MAKE VARIOUS FEE ADJUSTMENTS AND AMENDMENTS TO THE NURSE PRACTICE ACT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 90-171.27(b) reads as rewritten:

"(b) The schedule of fees shall not exceed the following rates:

| | |
|---|---------------------------------|
| Application for examination leading to certificate and license as registered nurse | \$45.00 |
| Application for certificate and license as registered nurse by endorsement | 45.00 — <u>75.00</u> |
| Application for each re-examination leading to certificate and license as registered nurse | 45.00 |
| Renewal of license to practice as registered nurse (two-year period) | 25.00 — <u>50.00</u> |
| Reinstatement of lapsed license to practice as a registered nurse and renewal fee | 50.00 — <u>90.00</u> |
| Application for examination leading to certificate and license as licensed practical nurse by examination | 45.00 |
| Application for certificate and license as licensed practical nurse by endorsement | 45.00 — <u>75.00</u> |
| Application for each re-examination leading to certificate and license as licensed practical nurse | 45.00 |
| Renewal of license to practice as a licensed practical nurse (two-year period) | 25.00 — <u>50.00</u> |
| Reinstatement of lapsed license to practice as a licensed practical nurse and renewal fee | 50.00 — <u>90.00</u> |

Reasonable charge for duplication services and materials.

(c) No refund of fees will be made.

(d) The Board may assess costs of disciplinary action against a nurse found in violation of the North Carolina Nursing Practice Act."

Sec. 2. G.S. 90-171.21(g) reads as rewritten:

"(g) Reimbursement. Board members are entitled to receive compensation and reimbursement as authorized by G.S. 93B-5, provided that Board members may receive a per diem not to exceed fifty dollars (\$50.00) per day for each day during which they are engaged in the official business of the Board."

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 21st day of July, 1987.

H.B. 179

CHAPTER 652

AN ACT TO REQUIRE POLITICAL ADVERTISING TO BE
LABELED ACCURATELY.

The General Assembly of North Carolina enacts:

Section 1. G.S. 163-278.16(f) reads as rewritten:

"(f) No media advertisement of any kind may be made by a treasurer, candidate, political committee, referendum committee or individual ~~in the case of the media~~ unless

- (1) It ~~it~~ bears the legend or includes the statement: (~~Paid for or sponsored~~) — 'Paid for by (or Sponsored by)..... (Name of candidate, political committee, referendum committee, individual)';
- (2) The name used in the labeling required in subdivision (1) of this subsection is the name that appears on the statement of organization as required in G.S. 163-278.7(b)(1), provided that this subdivision applies only if the sponsor is a political committee or referendum committee;
- (3) The sponsor states in the media advertisement its position:
 - a. for or against the candidate; or
 - b. for or against an opposing candidateprovided that this subdivision applies only if the media advertisement is made for or against a candidate; and
- (4) The sponsor states in the media advertisement its position for or against the ballot measure; provided this subdivision applies only if the media advertisement is made for or against a ballot measure.

The requirements of subdivisions (3) and (4) of this subsection do not apply to any print advertisement less than two inches by two inches in size, or to any radio or television advertisement of less than 20 seconds in length.

The media shall not publish or broadcast any political advertisement unless it bears the legend or includes the statement required herein. For purposes of this subsection, 'media' means broadcasting stations, carrier current stations, newspapers, magazines, periodicals, outdoor advertising facilities, billboards, and newspaper inserts."

Sec. 2. This act shall become effective January 1, 1988.

In the General Assembly read three times and ratified this the 21st day of July, 1987.

S.B. 128

CHAPTER 653

AN ACT TO AUTHORIZE THE CITY OF RALEIGH TO ENGAGE IN HOUSING PROGRAMS AND ACTIVITIES FOR LOW AND MODERATE INCOME PERSONS.

The General Assembly of North Carolina enacts:

Section 1. Findings and declarations. It is hereby found and declared that there is a serious shortage of decent, safe and sanitary housing available at low prices or rentals to persons and families of low and moderate income, and that private enterprise without assistance has been unable to meet that need in the City of Raleigh. These conditions contribute to urban blight and retard sound development and redevelopment thereby necessitating the following provisions to alleviate such conditions in the public interest.

Sec. 2. In addition to the other authority granted by law, the City of Raleigh is hereby authorized and empowered to engage in and to appropriate and expend any public funds for housing programs and activities for the benefit of low and moderate income persons, and to engage in the following activities: issuance of revenue bonds to raise funds for the making of loans to private individuals; programs of assistance and financing of rehabilitation efforts, including direct repair and the making of grants or loans; the purchase, lease or disposition of property for housing sites; and the construction, reconstruction, improvement or alteration of housing or housing projects. The City of Raleigh is authorized to enter into contracts or agreements with any person, association, partnership, corporation or another governmental agency to undertake, carry out or otherwise exercise the authority granted by this section. This authority shall be considered a part of the City's Community Development enabling authority. The City of Raleigh may not exercise its authority to issue revenue bonds to raise funds for the making of loans to private individuals pursuant to this section until it receives a written certification from the North Carolina Housing Finance Agency stating that it has determined that mortgage loans are not available, wholly or in part, from the Agency upon equivalent or more favorable terms and conditions through individual project financing or pooling of mortgages through individual project financings or a pooling of mortgages by the Agency. If the Agency does not issue its written certificate within thirty (30) days following delivery of the City's request, the City's request shall be deemed to be approved.

Sec. 3. This act shall apply to the City of Raleigh only.

Sec. 4. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 22nd day of July, 1987.

S.B. 351

CHAPTER 654

AN ACT TO PROVIDE FOR THE DEFENSE OF LOCAL HEALTH DEPARTMENT SANITARIANS ENFORCING PUBLIC HEALTH RULES OF THE NORTH CAROLINA COMMISSION FOR HEALTH SERVICES UNDER THE SUPERVISION OF THE NORTH CAROLINA DEPARTMENT OF HUMAN RESOURCES.

The General Assembly of North Carolina enacts:

Section 1. Chapter 143 of the General Statutes is hereby amended by changing the title of Article 31A to the following:

"Article 31A.

Defense of State Employees, Medical Contractors
and Local Sanitarians.

Sec. 2. Article 31A of the General Statutes is hereby amended by adding a new section, to be designated G.S. 143-300.8, and to read as follows:

"§ 143-300.8. *Defense of local sanitarians.*--Any local health department sanitarian enforcing rules of the Commission for Health Services under the supervision of the Department of Human Resources pursuant to G.S. 130A-4(b) shall be defended by the Attorney General, subject to the provisions of G.S. 143-300.4, and shall be protected from liability in accordance with the provisions of this Article in any civil or criminal action or proceeding brought against the sanitarian in his official or individual capacity, or both, on account of an act done or omission made in the scope and course of enforcing the rules of the Commission for Health Services. The Department of Human Resources shall pay any judgment against the sanitarian, or any settlement made on his behalf, subject to the provisions of G.S. 143-300.6."

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 22nd day of July, 1987.

H.B. 1194

CHAPTER 655

AN ACT CLARIFYING THE APPRAISAL OF REAL PROPERTY IN NON-REAPPRAISAL YEARS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-287 is rewritten to read:

" § 105-287. *Changing appraised value of real property in years in which general reappraisal or horizontal adjustment is not made.*--(a) In a year in which a general reappraisal or horizontal adjustment of real property in the county is not made, the assessor shall increase or decrease the appraised value of real property, as determined under G.S. 105-286, to:

- (1) Correct a clerical or mathematical error;
- (2) Correct an appraisal error resulting from a misapplication of the schedules, standards, and rules used in the county's most recent general reappraisal or horizontal adjustment; or
- (3) Recognize an increase or decrease in the value of the property resulting from a factor other than one listed in subsection (b).

(b) In a year in which a general reappraisal or horizontal adjustment of real property in the county is not made, the assessor may not increase or decrease the appraised value of real property, as determined under G.S. 105-286, to recognize a change in value caused by:

- (1) Normal, physical depreciation of improvements;
- (2) Inflation, deflation, or other economic changes affecting the county in general; or
- (3) Betterments to the property made by:
 - a. Repainting buildings or other structures;
 - b. Terracing or other methods of soil conservation;
 - c. Landscape gardening;
 - d. Protecting forests against fire; or
 - e. Impounding water on marshland for non-commercial purposes to preserve or enhance the natural habitat of wildlife.

(c) An increase or decrease in the appraised value of real property authorized by this section shall be made in accordance with the schedules, standards, and rules used in the county's most recent general reappraisal or horizontal adjustment. An increase or decrease in appraised value made under this section is effective as of January 1 of the year in which it is made and is not retroactive. This section does not modify or restrict the provisions of G.S. 105-312 concerning the appraisal of discovered property.

(d) Notwithstanding subsection (a), if a tract of land has been subdivided into lots and more than five acres of the tract remain unsold by the owner of the tract, the assessor may appraise the unsold portion as land acreage rather than as lots. A tract is considered subdivided into lots when the lots are located on streets laid out and

open for travel and the lots have been sold or offered for sale as lots since the last appraisal of the property."

Sec. 2. This act shall become effective January 1, 1988.

In the General Assembly read three times and ratified this the 22nd of July, 1987.

S.B. 350

CHAPTER 656**AN ACT TO ESTABLISH A TIME FRAME FOR FILING
APPEALS OF ADMINISTRATIVE PENALTY ASSESSMENTS.**

The General Assembly of North Carolina enacts:

Section 1. G.S. 130A-22(e) reads as rewritten:

"(e) A person contesting a penalty shall, by filing a petition pursuant to G.S. 150B-23(a) not later than 30 days after receipt by the petitioner of the document which constitutes agency action, be entitled to an administrative hearing and judicial review in accordance with Chapter ~~150A~~ 150B of the General Statutes, the Administrative Procedure Act."

Sec. 2. G.S. 130A-22(g) reads as rewritten:

"(g) The Secretary may bring a civil action in the superior court of the county where the violation occurred or where the defendant resides to recover the amount of the administrative penalty whenever a person:

- (1) Who has not requested an administrative hearing in accordance with subsection (e) of this section fails to pay the penalty within 60 days after being notified of the penalty; or
- (2) Who has requested an administrative hearing fails to pay the penalty within 60 days after service of a written copy of the decision as provided in ~~G.S. 150A-36~~ G.S. 150B-36 of the Administrative Procedure Act."

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 23rd day of July, 1987.

S.B. 457

CHAPTER 657**AN ACT TO AMEND THE PRIVATE PROTECTIVE SERVICES
ACT.**

The General Assembly of North Carolina enacts:

Section 1. G.S. 74C-3(b) is amended by adding a new subdivision to read:

"(10) A consultant who analyzes, tests, or in any way applies his expertise to interpreting, evaluating, or analyzing facts or evidence submitted by another in order to determine the cause or effect of physical or psychological occurrences, and furnishes his opinion and findings to the requesting source or to a designee of requestor."

Sec. 2. G.S. 74C-8(c) is rewritten to read:

"(c) A business entity other than a sole proprietorship shall not do business under this Chapter unless the business entity has in its employ a designated resident qualifying agent who meets the requirements for a license issued under this Chapter and who is, in fact, licensed under the provisions of this Chapter, unless otherwise approved by the Board. Provided however, that this approval shall not be given unless the licensee signs a statement agreeing to waive jurisdiction or unless the licensee agrees to appoint a resident agent for service of process by the Board. For the purposes of the Chapter a qualifying agent means an individual in a management position who is licensed under this Chapter and whose name and address have been registered with the Administrator. In the event that the qualifying agent upon whom the business entity relies in order to do business ceases to perform his duties as qualifying agent, the business entity shall notify the Administrator within 10 working days. The business entity must obtain a substitute qualifying agent within 30 days after the original qualifying agent ceases to serve as qualifying agent unless the Board, in its discretion, extends this period, for good cause, for a period of time not to exceed three months. The certificate authorizing the business entity to engage in a private protective service business shall list the name of at least one designated qualifying agent."

Sec. 2.1. G.S. 74C-8(d)(3) is rewritten to read:

"(3) For a private detective license, that he has had at least three years experience within the past five years in private investigative work, or in an investigative capacity as a member of any federal law enforcement agency, any State law enforcement agency, any municipal law enforcement department, or any county law enforcement or sheriff's department. The Board may provide by rule that post-secondary education is experience under the preceding sentence. Time spent teaching police science subjects at a post-secondary educational institution (such as a community college, college or university) shall toll the time for the minimum year requirements in the preceding two sentences. After administrative remedies have been

exhausted, disputes with the Board arising under G.S. 74C-8(d)(3) may be carried directly to the General Court of Justice in the county where the complainant resides."

Sec. 3. G.S. 74C-9(d) is rewritten to read:

"(d) The operator or manager of any branch office shall be properly licensed or registered. The license shall be posted at all times in a conspicuous place in the branch office. This license shall be issued for a term of one year. Every business covered under the provisions of this Chapter shall file in writing with the Board the addresses of each of its branch offices, if any, within 10 working days after the establishment, closing, or changing of the location of any branch office."

Sec. 4. G.S. 74C-11(a) is rewritten to read:

"(a) All licensees, within 20 days of the beginning of employment of an employee who will be engaged in the providing of private protective services covered by this Chapter unless the Administrator, in his discretion, extends the time period, for good cause, shall furnish the Board with the following:

- (1) Set(s) of classifiable fingerprints on standard F.B.I. applicant cards; recent photograph(s) of acceptable quality for identification; and
- (2) Statements of any criminal records obtained from the appropriate authority in each area where the employee has resided within the immediately preceding 48 months."

Sec. 5. G.S. 74C-11(f) is rewritten to read:

"(f) Notwithstanding the provisions of this section, a licensee may employ a person as an unarmed security guard for a period not to exceed 30 days in any given calendar year without registering that employee in accordance with this section; provided that the licensee submits to the Administrator a quarterly report, within 30 days after the end of the quarter in which the temporary employee worked, which provides the Administrator with the name, address, social security number, and dates of employment of such employee."

Sec. 6. G.S. 74C-12 is rewritten to read:

"(a) The Board may, after compliance with Chapter 150B of the General Statutes, suspend or revoke a license or registration issued under this Chapter if it is determined that the licensee or registrant has:

- (1) Made any false statement or given any false information in connection with any application for a license or trainee permit or registration or for the renewal or reinstatement of a license or trainee permit or registration;
- (2) Violated any provision of this Chapter;

- (3) Violated any rule promulgated by the Board pursuant to the authority contained in this Chapter;
- (4) Been convicted of any crime involving moral turpitude or any other crime involving violence or the illegal use, carrying, or possession of a dangerous weapon;
- (5) Impersonated or permitted or aided and abetted any other person to impersonate a law enforcement officer of the United States, this State, any other state, or any political subdivision of a state;
- (6) Engaged in or permitted any employee to engage in a private protective services business when not lawfully in possession of a valid license issued under the provisions of this Chapter;
- (7) Willfully failed or refused to render to a client service or a report as agreed between the parties and for which compensation has been paid or tendered in accordance with the agreement of the parties;
- (8) Knowingly made any false report to the employer or client for whom information is being obtained;
- (9) Committed an unlawful breaking or entering, assault, battery, or kidnapping;
- (10) Knowingly violated or advised, encouraged, or assisted the violation of any court order or injunction in the course of business as a licensee;
- (11) Committed any other act which is a ground for the denial of an application for a license under this Chapter;
- (12) Undertaken to give legal advice or counsel or to in any way falsely represent that he is representing any attorney or he is appearing or will appear as an attorney in any legal proceeding;
- (13) Issued, delivered, or uttered any simulation of process of any nature which might lead a person or persons to believe that such simulation--written, printed, or typed--may be a summons, warrant, writ or court process, or any pleading in any court proceeding;
- (14) Failed to make the required contribution to the Private Protective Services Recovery Fund or failed to maintain the certificate of liability insurance required by this Chapter;
- (15) Violated the firearm provisions set forth in this Chapter;
- (16) Committed any act prohibited under G.S. 74C-16;
- (17) Failed to notify the Administrator by a business entity other than a sole proprietorship licensed pursuant to this Chapter of the cessation of employment of the business entity's qualifying agent within the time set forth in this Chapter;

- (18) Failed to obtain a substitute qualifying agent by a business entity within 30 days after its qualifying agent has ceased to serve as the business entity's qualifying agent;
- (19) Been judged incompetent by a court having jurisdiction under Chapter 35 of the General Statutes or committed to a mental health facility for treatment of mental illness, as defined in G.S. 122-36(d), by a court having jurisdiction under Article 5A of Chapter 122 of the General Statutes.

(b) The revocation or suspension of a license or registration by the Board as provided in subsection (a) shall be in writing, signed by the Administrator of the Board stating the grounds upon which the Board decision is based. The aggrieved person shall have the right to appeal from this decision as provided in Chapter 150B of the General Statutes."

Sec. 7. G.S. 74C-16(d) is rewritten to read:

"(d) No law enforcement officers of the United States, this State, any other state, or any political subdivision of a state shall be licensed as a private detective or security guard and patrol business licensee under this Chapter; provided no law enforcement officer of the United States, this State, or any of its political subdivisions may use any motor vehicle owned or leased by a law enforcement agency in the course and scope of any private employment which is subject to regulation by the provisions of this Chapter; provided that nothing in this section shall be construed to prohibit the holder of a company police commission under Chapter 74A of the General Statutes from being licensed under this Chapter or being employed by a licensee under this Chapter."

Sec. 8. G.S. 74C-16 is amended by adding a new subsection to read:

"(f) No sworn court official shall be licensed or registered under this Chapter."

Sec. 9. This act shall become effective October 1, 1987.

In the General Assembly read three times and ratified this the 23rd day of July, 1987.

S.B. 597

CHAPTER 658

AN ACT TO EXPAND THE DEFINITION OF OFFENSES INVOLVING IMPAIRED DRIVING.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-4.01(24a)c. is amended by adding before the words "Involuntary manslaughter" the phrase "Second degree murder under G.S. 14-17 or". and by removing the capitalization from the word "Involuntary".

Sec. 2. G.S. 20-24(e) is amended by deleting the word "manslaughter" both places it appears and substituting in lieu thereof in each place the word "homicide".

Sec. 3. This act shall become effective October 1, 1987.

In the General Assembly read three times and ratified this the 23rd day of July, 1987.

S.B. 748

CHAPTER 659

AN ACT TO PROVIDE THAT A DISTRICT COURT JUDGE HAS LIMITED JURISDICTION TO ENTER A TEMPORARY RESTRAINING ORDER PROHIBITING THE SUSPENSION, CANCELLATION, OR REVOCATION OF A DRIVER'S LICENSE IN CONJUNCTION WITH APPEALS FROM THE DIVISION OF MOTOR VEHICLES LICENSE ACTIONS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-25 reads as rewritten:

" § 20-25. *Right of appeal to court.*--Any person denied a license or whose license has been canceled, suspended or revoked by the Division, except where such cancellation is mandatory under the provisions of this Article, shall have a right to file a petition within 30 days thereafter for a hearing in the matter in the superior court of the county wherein such person shall reside, or to the resident judge of the district or judge holding the court of that district, or special or emergency judge holding a court in such district in which the violation was committed, and such court or judge is hereby vested with jurisdiction and it shall be its or his duty to set the matter for hearing upon 30 days' written notice to the Division, and thereupon to take testimony and examine into the facts of the case, and to determine whether the petitioner is entitled to a license or is subject to suspension, cancellation or revocation of license under the provisions of this Article. Provided, a judge of the district court shall have limited jurisdiction under this section to sign and enter a temporary restraining order only."

Sec. 2. This act shall become effective October 1, 1987.

In the General Assembly read three times and ratified this the 23rd day of July, 1987.

S.B. 795

CHAPTER 660

AN ACT TO PERMIT THE COURT DISCRETION, IN APPROPRIATE CASES, TO PROVIDE ALTERNATIVE PUNISHMENT FOR SHOPLIFTING OFFENDERS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 14-72.1(e) reads as rewritten:

"(e) Punishment. For a first conviction under subsections (a) or (d), or for a subsequent conviction for which the punishment is not specified by this subsection, the defendant may be fined up to one hundred dollars (\$100.00) and must be sentenced to a term of imprisonment that includes a minimum term of not less than 24 hours and a maximum term of not more than 60 days. The term of imprisonment may be suspended only on condition that the defendant perform community service for a term of at least 24 hours. For a second offense committed within three years after the date the defendant was convicted of an offense under this section, the defendant may be fined up to five hundred dollars (\$500.00) and must be sentenced to a term of imprisonment that includes a minimum term of not less than 72 hours and a maximum term of not more than six months. The term of imprisonment may be suspended only on condition that the defendant be imprisoned for a term of at least 72 hours as a condition of special probation, perform community service for a term of at least 72 hours, or both. For a third or subsequent offense committed within five years after the date the defendant was convicted of two other offenses under this section, the defendant may be fined and must be sentenced to a term of imprisonment that includes a minimum term of not less than 14 days and a maximum term of not more than two years. The term of imprisonment may be suspended only if a condition of special probation is imposed to require the defendant to serve a term of imprisonment of at least 14 days. However, if the sentencing judge finds that the defendant is unable, by reason of mental or physical infirmity, to perform the service required under this section, and the reasons for such findings are set forth in the judgment, he may pronounce such other sentence as he finds appropriate."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 23rd day of July, 1987.

H.B. 113

CHAPTER 661

AN ACT TO PERMIT THE GOVERNING BODY OF A TAXING UNIT TO ALLOW THE TAX COLLECTOR TO ADJUST SMALL UNDERPAYMENTS AND OVERPAYMENTS OF PROPERTY TAX.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-357 is amended by adding a new subsection to read:

"(c) Small Underpayments and Overpayments. The governing body of a taxing unit may, by resolution, permit its tax collector to treat small underpayments of taxes as fully paid and to not refund small overpayments of taxes unless the taxpayer requests a refund before the end of the fiscal year in which the small overpayment is made. A 'small underpayment' is a payment made, other than in person, that is no more than one dollar (\$1.00) less than the taxes due on a tax receipt. A 'small overpayment' is a payment made, other than in person, that is no more than one dollar (\$1.00) greater than the taxes due on a tax receipt.

The tax collector shall keep records of all underpayments and overpayments of taxes by receipt number and amount and shall report these payments to the governing body as part of his settlement.

A resolution authorizing adjustments of underpayments and overpayments as provided in this subsection shall:

- (1) Be adopted on or before June 15 of the year to which it is to apply;
- (2) Apply to taxes levied for all previous fiscal years; and
- (3) Continue in effect until repealed or amended by resolution of the taxing unit."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 23rd of July, 1987.

H.B. 83

CHAPTER 662

AN ACT TO INCREASE THE CIVIL PENALTY FOR FAILURE TO CANCEL INSTRUMENTS OF INDEBTEDNESS AND DEEDS OF TRUST AND MAKE OTHER TECHNICAL CHANGES TO G.S. 45-36.3 AND G.S. 47-46.1.

The General Assembly of North Carolina enacts:

Section 1. G.S. 45-36.3(a) is amended by adding ", trustor" immediately after the word "grantor" in subdivision (1); and by rewriting subdivision (2) as follows:

"(2) Alternatively, the holder of the evidence of the indebtedness or a duly authorized agent or attorney of such holder, at the request of the grantor, trustor or mortgagor, shall forward said instrument and the deed of trust or mortgage instrument, with payment and satisfaction acknowledged in accordance with the requirements of G.S. 45-37, to the grantor, trustor or mortgagor."

Sec. 2. G.S. 45-36.3(b) is rewritten to read:

"(b) Any person, institution or agent who fails to comply with this section may be required to pay a civil penalty of not more than one thousand dollars (\$1,000) in addition to reasonable attorneys' fees and any other damages awarded by the court to the grantor, trustor or mortgagor, or to a subsequent purchaser of the property from the grantor, trustor or mortgagor. A five hundred dollar (\$500.00) civil penalty may be recovered by the grantor, trustor or mortgagor, and a five hundred dollar (\$500.00) penalty may be recovered by the purchaser of the property from the grantor, trustor or mortgagor. If that purchaser of the property consists of more than a single grantee, then the civil penalty will be divided equally among all of the grantees. A petitioner may recover damages under this section only if he has given the mortgagee, obligee, beneficiary or other responsible party written notice of his intention to bring an action pursuant to this section. Upon receipt of this notice, the mortgagee, obligee, beneficiary or other responsible party shall have 30 days, in addition to the initial 60-day period, to fulfill the requirements of this section."

Sec. 3. G.S. 45-36.3 is amended by adding a new subsection as follows:

"(c) Should any person, institution or agent who is not the present holder of the evidence of indebtedness be required to pay a civil penalty, attorneys' fees, or other damages under this section, they will have an action against the holder of the evidence of indebtedness for all sums they were required to pay."

Sec. 4. G.S. 47-46.1, as enacted by Chapter 405, Session Laws of 1987, is amended by deleting "notice of satisfaction (or annexed notice of satisfaction)", and substituting "acknowledgement".

Sec. 5. Sections 1 through 3 of this act shall become effective October 1, 1987. Section 4 of this act is effective on the same date as Chapter 405, Session Laws of 1987.

In the General Assembly read three times and ratified this the 24th day of July, 1987.

H.B. 100

CHAPTER 663

AN ACT TO MAKE CERTAIN CHANGES IN THE DISTRIBUTIVE AWARD OF VESTED PENSION AND RETIREMENT BENEFITS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 50-20(b)(3) reads as rewritten:

"(3) 'Distributive award' means payments that are payable either in a lump sum or over a period of time in fixed amounts, but shall not include alimony payments or other similar payments for support and maintenance that which are treated as ordinary income to the recipient under the Internal Revenue Code.

The distributive award of vested pension, retirement, and other deferred compensation benefits may be payments made payable:

- a. As a lump sum by agreement;
- b. Over a period of time in fixed amounts by agreement; or
- c. As a prorated portion of the benefits made to the designated recipient at the time the party against whom the award is made actually begins to receive the benefits; or
- d. By awarding a larger portion of other assets to the party not receiving the benefits, and a smaller share of other assets to the party entitled to receive the benefits.

Notwithstanding the foregoing, the court shall not require the administrator of the fund or plan involved to make any payments until the party against whom the award is made actually begins to receive the benefits. The award shall be based upon determined using the proportion of the amount of time the marriage existed, (up to the date of separation of the parties), simultaneously with the employment which earned the vested pension, or retirement, rights or deferred compensation benefit, to the total amount of time of employment. Said award shall not be based on contributions made after the separation, but shall include any growth on the amount of the pension or retirement account vested at the time of the separation. In the event the person receiving the distributive award dies, full rights to vested pension, retirement, and other deferred compensation benefits, including military pensions eligible under the federal Uniformed Services Former Spouses' Protection Act, shall belong to the party against whom the award is made. In the event the party against whom the award is made dies, the person receiving the distributive award shall receive no further benefits. The total amount of contributions, years of service and pension, retirement, and other deferred compensation benefits shall be certified by the administrator of the

~~plan or fund involved upon receipt of a court order to do so. The award shall be based on the vested accrued benefit, as provided by the plan or fund, calculated as of the date of separation, and shall not include contributions, years of service or compensation which may accrue after the date of separation. The award shall include gains and losses on the prorated portion of the benefit vested at the date of separation. No award shall exceed fifty percent (50%) of the cash benefits by the party person against whom the award is made is entitled to receive as vested pension, retirement, or other deferred compensation benefits.~~

~~In the event the person receiving the award dies, the unpaid balance, if any, of the award shall pass to the beneficiaries of the recipient by will, if any, or by intestate succession. In the event the person against whom the award is made dies, the award to the recipient shall remain payable to the extent permitted by the pension or retirement system or deferred compensation plan or fund involved.~~

~~The Court may require distribution of the award by means of a qualified domestic relations order, as defined in Section 414(p) of the Internal Revenue Code of 1986. To facilitate the calculation and payment of distributive awards, the administrator of the system, plan or fund may be ordered to certify the total contributions, years of service, and pension, retirement, or other deferred compensation benefits payable.~~

~~The provisions of this section and G.S. 50-21 shall apply to all retirement, pension, pension, retirement, and other deferred compensation systems plans and funds, including military pensions eligible under the Federal Uniform Services Former Spouses Protection Act, and including funds administered by the State pursuant to General Statutes Chapters 118, 120, 127A, 128, 135, 143, 143B, and 147 of the General Statutes, to the extent of a member's accrued benefit at retirement or withdrawal as determined by the system's or fund's consulting actuary the date of separation, as determined by the court."~~

Sec. 2. This act shall become effective October 1, 1987, and shall apply only when the action for absolute divorce is filed on or after that date.

In the General Assembly read three times and ratified this the 24th day of July, 1987.

H.B. 193

CHAPTER 664

AN ACT TO DEFINE RESUMPTION OF MARITAL RELATIONS BY SEPARATED SPOUSES.

The General Assembly of North Carolina enacts:

Section 1. A new section is added to Chapter 52 of the General Statutes as follows:

"§ 52-10.2. *Resumption of marital relations defined.*--'Resumption of marital relations' shall be defined as voluntary renewal of the husband and wife relationship, as shown by the totality of the circumstances. Isolated incidents of sexual intercourse between the parties shall not constitute resumption of marital relations."

Sec. 2. Two new sentences are added at the end of G.S. 50-6, to read as follows:

"Whether there has been a resumption of marital relations during the period of separation shall be determined pursuant to G.S. 52-10.2. Isolated incidents of sexual intercourse between the parties shall not toll the statutory period required for divorce predicated on separation of one year."

Sec. 3. A new sentence is added at the end of G.S. 50-16.9(a), to read as follows:

"Any motion to modify or terminate alimony or alimony **pendente lite** based on a resumption of marital relations between parties who remain married to each other shall be determined pursuant to G.S. 52-10.2."

Sec. 4. This act shall become effective October 1, 1987.

In the General Assembly read three times and ratified this the 24th day of July, 1987.

H.B. 477

CHAPTER 665

AN ACT TO AMEND THE LICENSURE ACT FOR SPEECH AND LANGUAGE PATHOLOGISTS AND AUDIOLOGISTS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 90-293 is amended:

(1) In subdivision (1) by deleting: "provided, however, that a person licensed under Chapter 93D of the General Statutes may use the term "National Hearing Aid Society, Certified Hearing Aid Audiologist" except in public representations, advertising and telephone directory listings."

(2) In subdivision (6) by deleting: "A person licensed under this Article may not engage in the dispensing, fitting and selling of hearing aids unless that person is also licensed under Chapter 93D of the General Statutes."

(3) By repealing subdivision (8).

(4) By adding a new subdivision to read:

"(9) 'Accredited college or university' means an institution of higher learning accredited by the Southern Association of Colleges and Universities, or accredited by a similarly recognized association of another locale."

Sec. 2. G.S. 90-294 is amended:

(1) By rewriting the second sentence of subsection (a) to read:

"A person may be licensed in both areas if qualified in both areas."

(2) In subsection (b) by deleting: "or holds a current, unsuspended, unrevoked license of endorsement pursuant to G.S. 90-297" and by rewriting the third sentence of the subsection to read:

"Nothing in this Article, however, shall be construed to prevent a qualified person licensed in this State under any other law from engaging in the profession or occupation for which such person is licensed."

(3) In subdivision (c)(1) by deleting: "except that an individual is not exempt from this Article who does work as a speech and language pathologist or audiologist outside the scope of such employment for which a fee may be paid directly or indirectly to such person by or for the recipient of the service".

(4) Subdivision (c)(3) is repealed.

(5) By adding two new subdivisions to subsection (c) to read:

"(5) A physician licensed to practice medicine.

(6) Persons performing audiometric screenings and whose work is under the supervision of a licensed physician, or licensed audiologist.

(7) Persons who are now or may become engaged in counseling or instructing laryngectomees in the methods, techniques, or problems of learning to speak again.

(8) Individuals licensed under G.S. 93D."

Sec. 3. G.S. 90-295 is amended:

(1) By rewriting the catch line and first sentence to read:

"§ 90-295. *Qualifications of applicants for permanent licensure.*--To be eligible for permanent licensure by the Board as a speech and language pathologist or audiologist, the applicant must:"

(2) By adding a new sentence at the end of subdivision (4) to read:

"The supervision must be performed by a person who holds a valid license under this Article, or certificate of clinical competence from the American Speech-Language-Hearing Association, in the specific area for which licensure is sought."

(3) By rewriting subdivision (5) to read:

"Pass an examination established or approved by the Board."

Sec. 4. G.S. 90-296 is rewritten to read:

" § 90-296. *Examinations.*--(a) An applicant for permanent licensure who has satisfied the academic requirements of G.S. 90-295, shall pass a written examination approved or established by the Board. A person who holds a temporary license during the supervised experience year must take and pass the examination required by the Board for permanent licensure before the end of the temporary license period.

(b) The Board shall administer or approve at least two examinations of the type described in subsection (a) of this section each year, and additional examinations as the volume of applications makes appropriate.

(c) An examination shall not be required as a prerequisite for a license for:

(1) A person who holds a certificate of clinical competence issued by the American Speech-Hearing-Language Association in the specialized area for which such person seeks licensure; or

(2) A person who has met the educational, practical experience, and examination requirements of another state or jurisdiction which has requirements equivalent to or higher than those in effect pursuant to this Article for the practice of audiology or speech pathology."

Sec. 5. G.S. 90-297 is repealed.

Sec. 6. G.S. 90-298 is rewritten to read:

" § 90-298. *Qualifications for applicants for temporary licensure.*--(a) To be eligible for temporary licensure an applicant must:

(1) Meet the academic and clinical practicum requirements of G.S. 90-295(1), (2), and (3); and

(2) Submit a plan of supervised experience complying with the provisions of G.S. 90-295(4); and

(3) Pay the temporary license fee required by G.S. 90-305(5).

(b) A temporary license is required when an applicant has not completed the required supervised experience and passed the required examination. A person who holds a temporary license during the supervised experience year must take and pass the examination required by the Board for permanent licensure before the end of the temporary license period.

(c) A temporary license issued under this section shall be valid only during the period of supervised experience required by G.S. 90-295(4), and shall not be renewed."

Sec. 7. G.S. 90-301 is amended:

(1) By rewriting subdivision (3) to read:

"Unethical conduct as defined in this Article or in a code of ethics adopted by the Board."

(2) By rewriting subdivision (5) to read:

"Failure to exercise a reasonable degree of professional skill and care in the delivery of professional services."

(3) By adding a new subdivision to read:

"(6) Any violation of the provisions of this Article."

Sec. 8. Article 22 of Chapter 90 of the General Statutes is amended by adding a new section to read:

"§ 90-301A. *Unethical acts and practices.*--Unethical acts and practices shall be defined as including:

- (1) Obtaining or attempting to obtain any fee by fraud or misrepresentation.
- (2) Employing directly or indirectly any suspended or unlicensed person to perform any work covered by this Article.
- (3) Using, or causing or promoting the use of any advertising matter, promotional literature, testimonial, guarantee, warranty, label, brand, insignia, or any other representation, however disseminated or published, which is misleading, deceiving, improbable, or untruthful.
- (4) Aiding, abetting, or assisting any other person or entity in violating the provisions of this Article.
- (5) Willfully harming any person in the course of the delivery of professional services licensed by this Article.
- (6) Treating a person who cannot reasonably be expected to benefit from treatment.
- (7) Charging a fee for treatment or services not rendered.
- (8) Providing or attempting to provide services or supervision of services by persons not properly prepared or legally qualified to perform or permitting services to be provided by a person under such person's supervision who is not properly prepared or legally qualified to perform such services.
- (9) Guaranteeing the result of any therapeutic or evaluation procedure."

Sec. 9. G.S. 90-302 is amended:

(1) By deleting "No person may:" and substituting "No person, partnership, corporation, or other entity may:".

(2) By adding a new subdivision to read:

"(6) Aid, assist, abet, or direct any person licensed under this Article in violation of the provisions of this Article."

Sec. 10. G.S. 90-304(a) is amended by adding a new subdivision to read:

"(7) To bring an action to restrain or enjoin violations of this Article in addition to and not in lieu of criminal prosecution or proceedings to revoke or suspend licenses issued under this Article."

Sec. 11. G.S. 90-305 is rewritten to read:

" § 90-305. *Fees.*--Persons subject to licensure under this Article shall pay the following fees to the Board:

| | |
|-------------------------|---------|
| (1) Application fee | \$30.00 |
| (2) Examination fee | 30.00 |
| (3) Initial license fee | 40.00 |
| (4) Renewal license fee | 40.00 |
| (5) Temporary license | 40.00 |
| (6) Delinquency fee | 25.00. |

Sec. 12. G.S. 90-306 is rewritten to read:

" § 90-306. *Penalty for violation.*--Any person, partnership, or corporation who or which willfully violates the provisions of this Article shall be guilty of a misdemeanor and shall be fined not less than one hundred dollars (\$100.00), nor more than five hundred dollars (\$500.00) or be imprisoned for a period not exceeding six months, or both, in the discretion of the Court."

Sec. 13. This act shall become effective October 1, 1987.

In the General Assembly read three times and ratified this the 24th day of July, 1987.

H.B. 648

CHAPTER 666

AN ACT TO PROHIBIT FRAUDULENT DISCLOSURE AND WILLFUL NONDISCLOSURE ON APPLICATION FOR STATE EMPLOYMENT AND TO PROVIDE PENALTIES FOR SUCH.

The General Assembly of North Carolina enacts:

Section 1. Article 7 of Chapter 126 of the General Statutes is amended by adding a section after G.S. 126-29 to read:

" § 126-30. *Fraudulent disclosure and willful nondisclosure on application for State employment; penalties.*--(a) Any employee who knowingly and willfully discloses false or misleading information, or conceals dishonorable military service; or conceals prior employment history or other requested information, either of which are significantly related to job responsibilities on an application for State employment may be subjected to disciplinary action up to and including immediate dismissal from employment. Dismissal shall be mandatory where the applicant discloses false or misleading

information in order to meet position qualifications. Application forms for State employment shall include a statement informing applicants of the consequences of such fraudulent disclosure or lack of disclosure.

(b) The employing authority within each department, university, board, or commission, shall verify the status of credentials and the accuracy of statements contained in the application of each new employee within 90 days from the date of the employee's employment. Failure to verify the application shall not bar action under subsection (a) above.

(c) The State Personnel Commission shall issue rules and procedures to implement this section for all departments, agencies and institutions which are not exempted from the State Personnel Act under G.S. 126-5(c1). Each agency, department and institution which is exempted under G.S. 126-5(c1) shall issue regulations to implement this section pursuant to the rulemaking procedures applicable to it."

Sec. 2. This act shall become effective on January 1, 1988.

In the General Assembly read three times and ratified this the 24th of July, 1987.

H.B. 772

CHAPTER 667

AN ACT TO IMPOSE FEES FOR WITHDRAWING FROM OR
REJOINING THE NORTH CAROLINA FIREMEN'S AND
RESCUE SQUAD WORKERS' PENSION FUND.

The General Assembly of North Carolina enacts:

Section 1. G.S. 118-43(4) is rewritten to read:

"(4) Any member withdrawing from the fund shall, upon proper application, be paid all moneys the individual contributed to the fund without accumulated earnings on the payments after the time they were made less an administrative fee equal to the lesser of the amount the individual contributed to the fund or twenty-five dollars (\$25.00). The administrative fees collected by the fund shall be retained by the Board to defray administrative expenses, including salaries. Notwithstanding the foregoing, if any person, firm, corporation, or other entity has made contributions on behalf of a member and that member withdraws from the fund, the person, firm, corporation, or other entity shall be entitled to a refund equal to the amount of contributions made by them after the Board has been notified of the contributor's desire to be refunded its contributions upon the member's withdrawal. Any refunds to a contributor other than a member shall also be subject to the twenty-five dollar (\$25.00) administrative fee. If a refund is to be

shared by a member and another party the administrative fee shall be applied to each portion on a pro rata basis."

Sec. 2. Article 3 of Chapter 118 of the General Statutes is amended by adding a new section G.S. 118-41.2 to read as follows:

"§ 118-41.2. *Administrative fee for rejoining the fund.*--Any individual who had been a member of the fund and who applies to rejoin the fund shall not be entitled to membership until he or she has paid an administrative fee of twenty-five dollars (\$25.00), which fee shall be in addition to any other charges or payments required by the board of trustees to rejoin the fund based upon the fund's loss of earnings resulting from the member's withdrawal from the fund. The administrative fees collected by the fund shall be retained by the Board to defray administrative expenses, including salaries."

Sec. 3. This act shall become effective August 1, 1987.

In the General Assembly read three times and ratified this the 24th day of July, 1987.

H.B. 871

CHAPTER 668

AN ACT TO ALLOW THE TOWNS OF KNIGHTDALE AND ZEBULON TO IMPOSE WATER AND WASTEWATER CAPACITY CHARGES.

Whereas, rapid growth through the influx of new residents and new construction impose on the Towns of Knightdale and Zebulon increased capital costs necessary to insure that adequate capacities of treated water and wastewater for the customers of the towns' systems are protected and made available to the users of the towns' facilities; and

Whereas, it is the purpose of this act to better enable the Towns of Knightdale and Zebulon to accommodate orderly growth and development within its corporate limits and extraterritorial jurisdiction by providing them with new methods of regulating development to meet increased demands for the protection, upgrading and future expansion of their water treatment facilities and wastewater treatment facilities; and

Whereas, it is the further purpose of this act to place an equitable share of the costs of protecting, upgrading, expanding and adding to the present water and wastewater treatment facilities on all new and expanded users of such facilities; and

Whereas, it is the intent of the General Assembly that the costs of protecting, upgrading, expanding and adding to the present water and wastewater treatment facilities be borne in part by those requiring new

or increased capacities from such facilities, rather than placing the brunt of those costs on existing users of the facilities; Now, therefore,

The General Assembly of North Carolina enacts:

Section 1. Definitions. The following definitions apply to this act, unless the context clearly requires otherwise:

(1) "Capital costs" means costs spent for protecting, upgrading, expanding and/or developing new water treatment facilities and/or wastewater treatment facilities intended to serve the customers of the towns' water and/or wastewater treatment system.

(2) "Developer" means an individual, corporation, partnership, organization, association, firm, political subdivision, or other legal entity constructing or creating new construction.

(3) "New construction" means any new development, construction, or installation that results in the use of the towns' water treatment facilities or wastewater treatment facilities and includes current users of that system that require additional capacity from said water or wastewater treatment facilities.

(4) "Capacity charge" means the charge imposed upon new construction as defined herein pursuant to the grant of regulatory authority contained herein.

Sec. 2. Subject to the conditions hereinafter set forth, a town may adopt an ordinance or ordinances imposing and collecting a regulatory fee defined herein as a "capacity charge" on all new construction.

Sec. 3. The amount of each "capacity charge" imposed and collected shall be based upon reasonable and uniform consideration of capital costs ultimately to be incurred by the town as a result of the new construction. The "capacity charge" must bear a direct relationship to the additional or expanded capital costs incurred or ultimately to be incurred for the protecting, upgrading, expanding or developing of new water or wastewater treatment facilities to serve the town.

Sec. 4. The amount of each "capacity charge" shall be based on qualified needs and specific classifications and rates, which shall be uniformly applied to all members of a class; however, the town may vary the charges according to classes of service and may adopt different schedules of charges to be imposed upon new construction within the town limits versus new construction outside of the town limits.

Sec. 5. Before adopting or amending any "capacity charge" ordinance authorized by this act, the town governing board shall hold a public hearing on it. A notice of the public hearing shall be given so as to conform with G.S. 160A-364, as it may be amended from time to time. No "capacity charge" ordinance shall be adopted or amended without first giving the planning board a reasonable opportunity to make comments and recommendations to the town governing board.

Sec. 6. Monies collected as "capacity charges" shall be placed in a separate trust fund. All such revenues shall be spent for the capital facilities for which they were collected.

Sec. 7. A cause of action as to the validity of any "capacity charge" adopted under this act shall be brought within 90 days after its assessment.

Sec. 8. The town is authorized to enact ordinances, resolutions, rules and regulations that are necessary or expedient to carry this act into execution and effect.

Sec. 9. The powers conferred in this act shall be supplementary to all other powers and procedures authorized by any other general or local law. Assessments, charges, fees, or rates authorized by any other general or local law are not affected by this act.

Sec. 10. This act applies to the Towns of Knightdale and Zebulon only.

Sec. 11. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 24th day of July, 1987.

H.B. 918

CHAPTER 669

AN ACT TO AUTHORIZE GUILFORD COUNTY AND THE CITIES OF GREENSBORO AND HIGH POINT TO ACQUIRE REAL PROPERTY BY CONDEMNATION IN ORDER TO PRESERVE OPEN SPACE AND OPEN AREA, FOR THE PROTECTION AND CONSERVATION OF WATERSHED AREAS AND MUNICIPAL DRINKING WATER SUPPLIES, AND TO ACQUIRE THE FEE OR ANY LESSER INTEREST.

The General Assembly of North Carolina enacts:

Section 1. G.S. 160A-401 reads as rewritten:

"§ 160A-401. *Legislative intent.*--It is the intent of the General Assembly in enacting this Part to provide a means whereby any county or city may acquire, by purchase, gift, grant, bequest, devise, lease, condemnation, or otherwise, and through the expenditure of public funds, the fee or any lesser interest or right in real property in order

to preserve, through limitation of their future use, open spaces and areas for public use, benefit, and enjoyment."

Sec. 2. G.S. 160A-403 reads as rewritten:

"§ 160A-403. *Counties or cities authorized to acquire and reconvey real property.*--Any county or city in the State may acquire by purchase, gift, grant, bequest, devise, lease, condemnation, or otherwise, the fee or any lesser interest, development right, easement, covenant, or other contractual right of or to real property within its respective jurisdiction, when it finds that the acquisition is necessary to achieve the purposes of this Part. Any county or city may also acquire the fee to any property for the purpose of conveying or leasing the property back to its original owner or other person under covenants or other contractual arrangements that will limit the future use of the property in accordance with the purposes of this Part, but when this is done, the property may be conveyed back to its original owner but to no other person by private sale."

Sec. 3. G.S. 40A-3(b) is amended by adding a new subdivision to read:

"(9a) Protecting and conserving watershed areas and municipal drinking water supplies to prevent the impairment thereof or maintaining the purity and quality of reservoir waters."

Sec. 4. G.S. 40A-42(a) reads as rewritten:

"(a) When a local public condemnor is acquiring property by condemnation for a purpose set out in G.S. 40A-3(b)(1), (4) or 7 or when a city is acquiring property for a purpose set out in G.S. 160A-311(1), (2), (3), (4), (6), ~~or 7~~ (7), or (8) or G.S. 40A-3(b)(9a), or when a county is acquiring property for a purpose set out in G.S. 153A-274(1), (2) ~~or (3)~~, (3) or (5), or G.S. 40A-3(b)(9a), title to the property and the right to immediate possession shall vest pursuant to this subsection. Unless an action for injunctive relief has been initiated, title to the property specified in the complaint, together with the right to immediate possession thereof, shall vest in the condemnor upon the filing of the complaint and the making of the deposit in accordance with G.S. 40A-41."

Sec. 5. G.S. 160A-407 reads as rewritten:

"§ 160A-407. *Definitions.*--(a) For the purpose of this Part an 'open space' or 'open area' is any space or area (i) characterized by great natural scenic beauty or (ii) whose existing openness, natural condition, or present state of use, if retained, would enhance the present or potential value of abutting or surrounding urban development, or would maintain or enhance the conservation of

natural or scenic resources or (iii) would assure, preserve and protect watershed areas as a basic asset and natural resource so as to prevent the impairment for municipal drinking water supply, or (iv) would assure, preserve, protect and maintain the purity and the quality of reservoir waters and would promote the health, safety and general welfare of the people of this State.

(b) For the purposes of this Part 'open space' or 'open area' and the 'public use and enjoyment' of interests or rights in real property shall also include open space land and open space uses. The term 'open space land' means any undeveloped or predominantly undeveloped land in an urban area that has value for one or more of the following purposes: (i) park and recreational purposes, (ii) conservation of land and other natural resources, ~~or~~ (iii) historic or scenic purposes, or (iv) conservation of watershed areas and municipal drinking water supplies to prevent the impairment thereof and assure, preserve, protect and maintain the purity and quality of reservoir waters. The term 'open space uses' means any use of open space land for (i) park and recreational purposes, (ii) conservation of land and other natural resources, ~~or~~ (iii) historic or scenic purposes, or (iv) conservation of watershed areas and municipal drinking water supplies to prevent the impairment thereof and assure, preserve, protect and maintain the purity and quality of reservoir waters."

Sec. 6. This act applies only to the County of Guilford and the Cities of Greensboro and High Point.

Sec. 7. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 24th day of July, 1987.

H.B. 804

CHAPTER 670

AN ACT TO CLARIFY THE PROPERTY REQUIREMENTS FOR PROBATE BY AFFIDAVIT OF SMALL TESTATE ESTATES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 28A-25-1.1(a) reads as rewritten:

"(a) When a decedent dies testate leaving ~~personal property real or personal or both~~, less liens and encumbrances thereon, not exceeding ten thousand dollars (\$10,000) in value, at any time after 30 days from the date of death, any person indebted to the decedent or having possession of tangible personal property or an instrument evidencing a debt, obligation, stock or chose in action belonging to the decedent ~~property belonging to the decedent~~ shall make payment of the indebtedness or deliver the ~~property~~ tangible personal property or an

instrument evidencing a debt, obligation, stock or chose in action to a person claiming to be an heir or creditor, or devisee of the decedent, not disqualified under G.S. 28A-4-2, upon being presented a certified copy of an affidavit filed in accordance with subsection (b) and made by or on behalf of the heir or creditor, or devisee stating:

- (1) The name and address of the affiant and the fact that he is an heir or creditor, ~~or devisee~~ of the decedent;
- (2) The name of the decedent and his residence at time of death;
- (3) The date and place of death of the decedent;
- (4) That 30 days have elapsed since the death of the decedent;
- (5) That the decedent died testate leaving personal property, ~~real or personal or both,~~ less liens and encumbrances thereon, not exceeding ten thousand dollars (\$10,000) in value;
- (6) That the decedent's will has been admitted to probate in the court of the proper county and a duly certified copy of the will has been recorded in each county in which is located any real property owned by the decedent at the time of his death;
- (7) That a certified copy of the decedent's will is attached to the affidavit;
- (8) That no application or petition for appointment of a personal representative is pending or has been granted in any jurisdiction;
- (9) The names and addresses of those persons who are entitled, under the provisions of the will or of the Intestate Succession Act, to the property of the decedent; and their relationship, if any, to the decedent; and
- (10) A description sufficient to identify each tract of real property owned by the decedent at the time of his death."

Sec. 2. G.S. 28A-25-2 reads as rewritten:

"§ 28A-25-2. *Effect of affidavit.*--The person paying, delivering, transferring or issuing personal property or the evidence thereof pursuant to an affidavit meeting the requirements of G.S. 28A-25-1(a) or G.S. 28A-25-1.1(a) is discharged and released to the same extent as if he dealt with a duly qualified personal representative of the decedent. He is not required to see to the application of the personal property or evidence thereof or to inquire into the truth of any statement in the affidavit. If any person to whom an affidavit is delivered refuses to pay, deliver, transfer, or issue any personal property or evidence thereof, it may be recovered or its payment, delivery, transfer, or issuance compelled upon proof of their right in

an action brought for that purpose by or on behalf of the persons entitled thereto. The court costs and attorney's fee incident to the action shall be taxed against the person whose refusal to comply with the provisions of G.S. 28A-25-1(a) or G.S. 28A-25-1.1(a) made the action necessary. The heir or creditor or ~~devisee~~ to whom payment, delivery, transfer or issuance is made is answerable and accountable therefore to any duly qualified personal representative or collector of the decedent's estate or to any other person having an interest in the estate."

Sec. 3. G.S. 28A-25-3(a) reads as rewritten:

"(a) If there has been no personal representative or collector appointed by the clerk of superior court, the heir or creditor or ~~devisee~~ who has collected personal property of the decedent by affidavit pursuant to G.S. 28A-25-1 or G.S. 28A-25-1.1 shall:

- (1) Disburse and distribute the same ~~property~~ in the following order:
 - a. To the payment of the surviving spouse's year's allowance and the children's year's allowance assigned in accordance with G.S. 30-15 through G.S. 30-33;
 - b. To the payment of the debts and claims against the estate of the decedent in the order of priority set forth in G.S. 28A-19-6, or to the reimbursement of any person who has already made payment thereof;
 - c. To the distribution of the remainder of the personal property to the persons entitled thereto under the provisions of the will or of the Intestate Succession Act; and
- (2) File an affidavit with the clerk of superior court that he has collected the personal property of the decedent and the manner in which he has disbursed and distributed the same. This final affidavit shall be filed within 90 days of the date of filing of the qualifying affidavit provided for in G.S. 28A-25-1 or G.S. 28A-25-1.1. If the heir or creditor or ~~devisee~~ cannot file the final affidavit within 90 days, he shall file a report with the clerk within that time period stating his reasons. Upon determining that the heir or creditor or ~~devisee~~ has good reason not to file the final affidavit within 90 days, the clerk may extend the time for filing up to one year from the date of filing the qualifying affidavit."

Sec. 4. G.S. 28A-25-4 reads as rewritten:

"§ 28A-25-4. *Clerk may compel compliance.*—If any heir or creditor who has collected personal property of the decedent by affidavit

pursuant to G.S. 28A-25-1 or G.S. 28A-25-1.1 shall fail to make distribution or file affidavit as required by G.S. 28A-25-3, the clerk of superior court may, upon his own motion or at the request of any interested person, issue an attachment against him for a contempt and commit him until he makes proper distribution and files the affidavit. In addition to or in lieu of filing this attachment, the clerk may require the heir or creditor ~~or devisee~~ to post a bond conditioned as provided in G.S. 28A-8-2."

Sec. 5. G.S. 28A-25-5 reads as rewritten:

"§ 28A-25-5. *Subsequently appointed personal representative or collector.*--Nothing in this Article shall preclude any interested person, including the affiant, from petitioning the clerk of superior court for the appointment of a personal representative or collector to conclude the administration of the decedent's estate. If such is done, the affiant who has been collecting personal property by affidavit shall cease to do so, shall deliver all assets in his possession to the personal representative, and shall render a proper accounting to the personal representative or collector. A copy of the accounting shall also be filed with the clerk having jurisdiction over the personal representative or collector."

Sec. 6. This act shall become effective October 1, 1987, and shall apply to all cases in which an affidavit under G.S. 28A-25-1 or G.S. 28A-25-1.1 is first filed after that date.

In the General Assembly read three times and ratified this the 24th day of July, 1987.

H.B. 1107

CHAPTER 671

AN ACT TO AMEND THE STATUTE ON DISORDERLY CONDUCT TO SPECIFY PERSONS AUTHORIZED TO ORDER THE VACATION OF BUILDINGS AND FACILITIES AT COLLEGES AND UNIVERSITIES, AND TO AMEND THE GENERAL STATUTES TO PERMIT CONSTITUENT INSTITUTIONS OF THE UNIVERSITY OF NORTH CAROLINA TO ESTABLISH CAMPUS LAW ENFORCEMENT AGENCIES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 14-288.4(a)(4)a. reads as rewritten:

"(4) Refuses to vacate any building or facility of any public or private educational institution in obedience to:

- a. An order of the chief administrative officer of the institution, or his ~~authorized~~ representative, who shall include for colleges and universities the vice chancellor for student affairs or his equivalent for the institution, the dean of students or his equivalent for the institution, the director of the law enforcement or security department for the institution, and the chief of the law enforcement or security department for the institution; or".

Sec. 2. Chapter 116 of the General Statutes is amended by adding a new section to read:

"§ 116-40.5. *Campus law enforcement agencies.*--(a) The Board of Trustees of any constituent institution of The University of North Carolina may establish a campus law enforcement agency and employ campus police officers. Such officers shall meet the requirements of Chapter 17C of the General Statutes, shall take the oath of office prescribed by Article VI, Section 7 of the Constitution, and shall have all the powers of law enforcement officers generally. The territorial jurisdiction of a campus police officer shall include all property owned or leased to the institution employing him and that portion of any public road or highway passing through such property and immediately adjoining it, wherever located.

(b) The Board of Trustees of any constituent institution of The University of North Carolina, having established a campus law enforcement agency pursuant to subsection (a) of this section, may enter into joint agreements with the governing board of any municipality to extend the law enforcement authority of campus police officers into any or all of the municipality's jurisdiction and to determine the circumstances in which this extension of authority may be granted.

(c) The Board of Trustees of any constituent institution of The University of North Carolina, having established a campus law enforcement agency pursuant to subsection (a) of this section, may enter into joint agreements with the governing board of any county, and with the consent of the sheriff, to extend the law enforcement authority of campus police officers into any or all of the county's jurisdiction and to determine the circumstances in which this extension of authority may be granted."

Sec. 3. G.S. 15A-402 is amended by adding the following new subsection (f) to the end of that section:

"(f) Campus Police Officers, Immediate and Continuous Flight. A campus police officer may arrest a person outside his territorial jurisdiction when the person arrested has committed a criminal offense within the territorial jurisdiction, for which the officer could have

arrested the person within that territory. and the arrest is made during such person's immediate and continuous flight from that territory."

Sec. 4. G.S. 160A-288 is amended by adding the following new subsection (d) to the end of that section:

"(d) For purposes of this section, a campus law enforcement agency shall be considered the equivalent of a municipal police department."

Sec. 5. Section 1 of this act is effective upon ratification. The remaining sections of this act shall become effective October 1, 1987.

In the General Assembly read three times and ratified this the 24th day of July, 1987.

H.B. 1242

CHAPTER 672

AN ACT TO AMEND THE LOCAL GOVERNMENT FINANCE
ACT IN CONNECTION WITH THE INVESTMENT OF LOCAL
FUNDS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 159-30(c) is amended to read:

"(c) Moneys may be invested in the following classes of securities, and no others:

- (1) Obligations of the United States or obligations fully guaranteed both as to principal and interest by the United States.
- (2) Obligations of the Federal Financing Bank, the Federal Farm Credit Bank, the Bank for Cooperatives, the Federal Intermediate Credit Bank, the Federal Land Banks, the Federal Home Loan Banks, the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Housing Administration, the Farmers Home Administration, the United States Postal Service.
- (3) Obligations of the State of North Carolina.
- (4) Bonds and notes of any North Carolina local government or public authority, subject to such restrictions as the secretary may impose.
- (5) Savings certificates issued by any savings and loan association organized under the laws of the State of North Carolina or by any federal savings and loan association having its principal office in North Carolina; provided that any principal amount of such certificate in excess of the

amount insured by the federal government or any agency thereof, or by a mutual deposit guaranty association authorized by the Administrator of the Savings and Loan Division of the Department of Commerce of the State of North Carolina, be fully collateralized.

- (6) Prime quality commercial paper bearing the highest rating of at least one nationally recognized rating service and not bearing a rating below the highest by any nationally recognized rating service which rates the particular obligation.
- (7) Bills of exchange or time drafts drawn on and accepted by a commercial bank and eligible for use as collateral by member banks in borrowing from a federal reserve bank, provided that the accepting bank or its holding company is either (i) incorporated in the State of North Carolina or (ii) has outstanding publicly held obligations bearing the highest rating of at least one nationally recognized rating service and not bearing a rating below the highest by any nationally recognized rating service which rates the particular obligations.
- (8) Participating shares in a mutual fund for local government investment; provided that the investments of the fund are limited to those qualifying for investment under this subsection (c) and that said fund is certified by the Local Government Commission. The Local Government Commission shall have the authority to issue rules and regulations concerning the establishment and qualifications of any mutual fund for local government investment.
- (9) A commingled investment pool established and administered by the State Treasurer pursuant to G.S. 147-69.3.
- (10) A commingled investment pool established by interlocal agreement by two or more units of local government pursuant to G.S. 160A-460 through G.S. 160A-464, if the investments of the pool are limited to those qualifying for investment under this subsection (c).
- (11) Evidences of ownership of, or fractional undivided interests in, future interest and principal payments on either direct obligations of the United States government or obligations the principal of and the interest on which are guaranteed by the United States, which obligations are held by a bank or trust company organized and existing under the laws of the United States or any state in the capacity of custodian.

- (12) Repurchase agreements with respect to either direct obligations of the United States or obligations the principal of and the interest on which are guaranteed by the United States if entered into with a broker or dealer, as defined by the Securities Exchange Act of 1934, which is a dealer recognized as a primary dealer by a Federal Reserve Bank, or any commercial bank, trust company or national banking association, the deposits of which are insured by the Federal Deposit Insurance Corporation or any successor thereof if:
- a. such obligations that are subject to such repurchase agreement are delivered (in physical or in book entry form) to the local government or public authority, or any financial institution serving either as trustee for the local government or public authority or as fiscal agent for the local government or public authority or are supported by a safekeeping receipt issued by a depository satisfactory to the local government or public authority, provided that such repurchase agreement must provide that the value of the underlying obligations shall be maintained at a current market value, calculated at least daily, of not less than one hundred percent (100%) of the repurchase price, and, provided further, that the financial institution serving either as trustee or as fiscal agent for the local government or public authority holding the obligations subject to the repurchase agreement hereunder or the depository issuing the safekeeping receipt shall not be the provider of the repurchase agreement;
 - b. a valid and perfected first security interest in the obligations which are the subject of such repurchase agreement has been granted to the local government or public authority or its assignee or book entry procedures, conforming, to the extent practicable, with federal regulations and satisfactory to the local government or public authority have been established for the benefit of the local government or public authority or its assignee;
 - c. such securities are free and clear of any adverse third party claims; and
 - d. such repurchase agreement is in a form satisfactory to the local government or public authority.
- (13) In connection with funds held by or on behalf of a local government or public authority, which funds are subject to the arbitrage and rebate provisions of the Internal Revenue

Code of 1986, as amended, participating shares in tax-exempt mutual funds, to the extent such participation, in whole or in part, is not subject to such rebate provisions, and taxable mutual funds, to the extent such fund provides services in connection with the calculation of arbitrage rebate requirements under federal income tax law; provided, the investments of any such fund are limited to those bearing one of the two highest ratings of at least one nationally recognized rating service and not bearing a rating below one of the two highest ratings by any nationally recognized rating service which rates the particular fund."

Sec. 2. The foregoing section of this act shall be deemed to provide an additional and alternative method for the doing of the things authorized thereby and shall be regarded as supplemental and additional to powers conferred by any other laws, and shall not be regarded as in derogation of any powers now existing.

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 24th day of July, 1987.

H.B. 2160

CHAPTER 673

AN ACT TO PERMIT CRAVEN COUNTY TO EXPEND AND/OR LOAN OUT APPROPRIATED FUNDS FOR INDUSTRIAL DEVELOPMENT PURPOSES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 158-7.1(a) reads as rewritten:

"(a) Each county and city in this State is authorized to make appropriations, and expend and/or lend funds appropriated, for the purposes of aiding and encouraging the location of manufacturing enterprises, making industrial surveys and locating industrial and commercial plants in or near such city or in the county; encouraging the building of railroads or other purposes which, in the discretion of the governing body of the city or of the county commissioners of the county, will increase the population, taxable property, agricultural industries and business prospects of any city or county. These appropriations may be funded by levy of property taxes pursuant to G.S. 153A-149 and 160A-209 and by the allocation of other revenues whose use is not otherwise restricted by law."

Sec. 2. This act applies to Craven County only.

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 24th day of July, 1987.

S.B. 344

CHAPTER 674

AN ACT TO AUTHORIZE THE DISCHARGE OF CLIENTS WHO
ESCAPE OR BREACH THE CONDITION OF RELEASE.

The General Assembly of North Carolina enacts:

Section 1. Part 1 of Article 5 of Chapter 122C of the General Statutes is amended by adding a new section to read:

" § 122C-205.1. *Discharge of clients who escape or breach the condition of release.*--(a) As described in G.S. 122C-205(a), when a client of a 24-hour facility escapes or breaches the condition of his release and does not return to the facility, the facility shall:

- (1) If the client was admitted under Part 2 of this Article or under Parts 3 or 4 of this Article to a nonrestrictive facility, discharge the client based on the professional judgment of the responsible professional;
- (2) If the client was admitted under Part 3 or Part 4 of this Article to a restrictive facility, discharge the client when the period for continued treatment, as specified by the court, expires;
- (3) If the client was admitted pending a district court hearing under Part 7 of this Article, request that the court consider dismissal or continuance of the case at the initial district court hearing; or
- (4) If the client was committed under Part 7 of this Article, discharge the client when the commitment expires.

(b) As described in G.S. 122C-205(a), when a client of a 24-hour facility who was admitted under Part 8 of this Article escapes or breaches the conditions of his release and does not return to the facility, the facility may discharge the client from the facility based on the professional judgment of the responsible professional and following consultation with the appropriate area authority or physician.

(c) Upon discharge of the client, the 24-hour facility shall notify all the persons directed to be notified of the client's escape or breach of conditional release under 122C-205(a), (b) and (d) that the client has been discharged.

(d) If the client is returned to the 24-hour facility subsequent to discharge from the facility, applicable admission or commitment procedures shall be followed, when appropriate."

Sec. 2. G.S. 122C-290(b) is amended by adding to the first sentence after "the respondent's compliance" and before", the area authority" the following phrase: "or whose treatment is provided on an inpatient basis is discharged in accordance with G.S. 122C-205.1(b)".

Sec. 3. This act shall become effective October 1, 1987.

In the General Assembly read three times and ratified this the 24th day of July, 1987.

S.B. 405

CHAPTER 675

AN ACT TO EXEMPT COUNTY-OWNED VEHICLES USED FOR TRANSPORTATION OF CLIENTS OF AREA MENTAL HEALTH, MENTAL RETARDATION, AND SUBSTANCE ABUSE AUTHORITIES FROM THE REQUIREMENT THAT THEY BE MARKED.

The General Assembly of North Carolina enacts:

Section 1. G.S. 14-250 reads as rewritten:

"§ 14-250. *Publicly owned vehicle to be marked.*--It shall be the duty of the executive head of every department of the State government, and of any county, or of any institution or agency of the State, to have painted on every motor vehicle owned by the State, or by any county, or by any institution or agency of the State, a statement that such car belongs to the State or to some county, or institution or agency of the State. Provided, however, that no automobile used by any county officer or county official for the purpose of transporting, apprehending or arresting persons charged with violations of the laws of the State of North Carolina, shall be required to be lettered. Provided, further, that in lieu of the above method of marking motor vehicles owned by any agency or department of the State government, it shall be deemed a compliance with the law if such vehicles have imprinted on the license tags thereof, above the license number, the words 'State Owned' and that such vehicles have affixed to the front thereof a plate with the statement 'State Owned'. Provided, further, that in lieu of the above method of marking vehicles owned by any county, it shall be deemed a compliance with the law if such vehicles have painted or affixed on the side thereof a circle not less than eight inches in diameter showing a replica of the seal of such county. Provided, further, that no county-owned motor vehicle used for transporting day or residential facility clients of area mental health, mental retardation, and substance abuse authorities established under Article 4 of Chapter 122C of the General Statutes shall be required to be lettered; provided,

further, notwithstanding this sentence, each vehicle shall bear the distinctive permanent registration plate pursuant to G.S. 20-84. Provided, further, that in lieu of the above method of marking vehicles owned by the State and permanently assigned to members of the Council of State, it shall be deemed a compliance with the law if such vehicles have imprinted on the license tags thereof the license number assigned to the appropriate member of the Council of State pursuant to G.S. 20-81(4); a member of the Council of State shall not be assessed any registration fee if he elects to have a State-owned motor vehicle assigned to him designated by his official plate number.

The General Assembly may authorize exemptions from the provisions of this section for each fiscal year. Each agency shall submit requests for private tags to the Division of Motor Fleet Management of the Department of Administration. The Division shall report the requests to the Appropriations Committees of the General Assembly by June 1."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 24th day of July, 1987.

S.B. 512

CHAPTER 676

AN ACT TO PROVIDE FOR THE REGISTRATION AND REGULATION OF THIRD PARTY ADMINISTRATORS.

The General Assembly of North Carolina enacts:

Section 1. General Statute Chapter 58 is amended by adding a new Article to read:

"Article 41.

"Third Party Administrators.

"§ 58-525. *Definitions.*--As used in this Article, unless the context clearly indicates otherwise:

(1) 'Administrator' means any person who:

- a. Collects charges or premiums from, or who adjusts or settles claims on, residents of this State in connection with the kinds of insurance specified in G.S. 58-72(1) through 58-72(3); or
- b. For another person and for a fee or other valuable consideration, provides claims or administrative services through a service contract with any person that provides a benefit plan to its employees or members.

(2) 'Benefit plan' means a wholly or partially self-funded benefit plan or a fully insured benefit plan that by means of direct payment, reimbursement, or other arrangement, provides partial or complete

coverage for health care services, including but not limited to medical, surgical, chiropractic, physical therapy, speech pathology, audiology, professional mental health, dental, hospital, or vision care, or for drugs or other items reasonably related thereto.

(3) 'Participant' means an individual who is covered under a benefit plan.

(4) 'Self-funder' means a person that assumes responsibility for payments under a benefit plan rather than transferring that responsibility to some other person.

(5) 'Service contract' means a written agreement between an administrator and an insurer or self-funder for the provision of services by an administrator pursuant to this Article.

" § 58-526. *Exceptions.*--Nothing in this Article applies to:

(1) An employer or any employee thereof who conducts the activities specified in G.S. 58-525(1) on behalf of the employees of the employer or the employees of one or more subsidiary or affiliated corporations of such employer;

(2) An insurer that is licensed under this Chapter or General Statute Chapters 57 or 57B or that is acting as an insurer with respect to a policy lawfully issued and delivered by it in and pursuant to the laws of a state in which the insurer was licensed to write insurance;

(3) An agent or broker licensed by the Commissioner for any or all of the kinds of insurance specified in G.S. 58-72(1) through G.S. 58-72(3) whose activities are limited exclusively to the sale of such kind or kinds of insurance;

(4) A creditor acting on behalf of its debtors with respect to insurance covering a debt between the creditor and its debtors;

(5) A trust, its trustees, agents, and employees acting thereunder, established in conformity with 29 U.S.C. 186;

(6) A trust exempt from taxation under Section 501(a) of the Internal Revenue Code, its trustees, and employees acting thereunder, or a custodian, its agents and employees acting pursuant to a custodian account that meets the requirements of Section 401(f) of the Internal Revenue Code;

(7) A bank, credit union, or other financial institution to the extent that such activities are subject to supervision or examination by federal or State banking authorities;

(8) A credit card issuing company that, consistent with State law, advances for and collects premiums or charges from its credit card holders who have authorized it to do so, provided such company does

not adjust or settle claims; or

(9) A person who adjusts or settles claims in the normal course of his practice or employment as an attorney at law, and who does not collect charges or premiums in connection with the kinds of insurance specified in G.S. 58-72(1) through G.S. 58-72(3).

" § 58-527. *Service contract necessary.*--(a) No person shall act as an administrator without a service contract; and such service contract shall be retained as part of the official records of both the insurer or the self-funder and the administrator for the duration of the service contract and for five years thereafter. Such service contract shall contain provisions that include the requirements of G.S. 58-529 through G.S. 58-534, except insofar as those requirements do not apply to the functions performed by the administrator.

(b) Where a policy is issued to a trustee or trustees, a copy of the trust agreement and any amendments thereto shall be furnished to the insurer by the administrator and shall be retained as part of the official records of both the insurer and the administrator for the duration of the policy and for five years thereafter.

" § 58-528. *Payment to administrator.*--Whenever an insurer utilizes the services of an administrator under the terms of a service contract, the payment to the administrator of any premiums or charges for insurance by or on behalf of a participant shall be deemed to have been received by the insurer, and the payment of return premiums or claims by the insurer to the administrator shall not be deemed to be payment to a participant until such payments are received by the participant. Nothing in this Article limits any right against the administrator resulting from its failure to make payments to the insurer or participants.

" § 58-529. *Maintenance of information.*--Every administrator shall maintain at its principal administrative office for the duration of the service contract and for five years thereafter adequate books and records of all transactions between the administrator, insurers or self-funders, and participants. Such books and records shall be maintained in accordance with prudent standards of insurance record keeping. The Commissioner shall have access to such books and records for the purpose of examination, audit, and inspection. Any trade secrets contained in such books and records, including but not limited to the identity and addresses of participants, shall be confidential; except the Commissioner may use such information in any proceeding instituted against the administrator. The insurer or self-funder shall retain the right to continuing access to such books and records sufficient to permit the insurer or self-funder to fulfill all

of its contractual obligations to participants, subject to any restrictions in the service contract between the insurer or self-funder and administrator on the proprietary rights of the parties in such books and records.

" § 58-530. *Approval of advertising.*--An administrator may use only such advertising pertaining to the business underwritten by an insurer as has been approved by such insurer in advance of its use.

" § 58-531. *Underwriting provision.*--The service contract shall make provision with respect to the underwriting standards or other standards pertaining to the business underwritten by such insurer.

" § 58-532. *Collection of premiums and charges.*--All insurance charges or premiums collected by an administrator on behalf of or for an insurer or self-funder, and return premiums received from such insurer or self-funder, shall be held by the administrator in a fiduciary capacity. Such funds shall be immediately remitted to the person or persons entitled thereto or shall be deposited promptly in a fiduciary bank account established and maintained by the administrator. If charges or premiums so deposited have been collected on behalf of or for more than one insurer or self-funder, the administrator shall establish separate account; or shall cause the bank in which such fiduciary account is maintained to keep records clearly recording the deposits to and withdrawals from such account made on behalf of each insurer or self-funder. The administrator shall promptly obtain and keep copies of all such records and, upon the request of an insurer or self-funder, shall furnish such insurer or self-funder with copies of such records pertaining to deposits and withdrawals made on behalf of such insurer or self-funder. The administrator shall not pay any claim by making withdrawals from such fiduciary account. Withdrawals from such account shall be made, as provided in the written agreement between the administrator and the insurer or self-funder, for:

- (1) remittance to an insurer or self-funder entitled thereto;
- (2) deposits to another account maintained in the name of such insurer or self-funder;
- (3) transfer to and deposit in a claims paying account, with claims to be paid as provided in G.S. 58-533;
- (4) payment to a group policyholder for remittance to the insurer entitled thereto;
- (5) payment to the administrator of its commission, fees, or charges; or
- (6) remittance of return premiums to any person entitled thereto.

" § 58-533. *Payment of claims.*--All claims paid by the administrator from funds collected on behalf of an insurer or self-funder shall be paid only on drafts of and as authorized by such insurer or self-funder.

" § 58-534. *Claim adjustment or settlement.*--With respect to any policies where an administrator adjusts or settles claims, the compensation to the administrator with regard to such policies shall in no way be contingent on claim experience. This section does not prevent the compensation of an administrator from being based on premiums, capitation, or number of claims paid or processed.

" § 58-535. *Notification required.*--Whenever the services of an administrator are utilized, the administrator shall provide a written notice approved by the insurer or self-funder to participants that advises them of the identities of and relationships among the administrator, the participant, and the insurer or self-funder. Whenever an administrator collects funds, it must identify and state separately in writing to the person paying to the administrator any charge or premium for insurance coverage the amount of any such charge or premium specified by the insurer for such insurance coverage.

" § 58-536. *Certificate of registration required.*--(a) No person shall act as or hold himself out to be an administrator in this State, other than an adjuster licensed in this State for the kinds of insurance specified in G.S. 58-72(1) through G.S. 58-72(3), unless he holds a certificate of registration as an administrator issued by the Commissioner. Such certificate shall be for a term of one year and shall be renewable. Failure to hold such certificate shall subject the administrator to the provisions of G.S. 58-9.7. The certificate shall be issued by the Commissioner to an administrator unless the Commissioner, after due notice and hearing, determines that the administrator is not competent, trustworthy, financially responsible, or of good personal and business reputation; has violated any insurance statute or administrative rule; or has had a previous application for an insurance license denied for cause within the preceding five years.

(b) Each application for the issuance or renewal of a certificate shall be accompanied by a filing fee of twenty dollars (\$20.00) and evidence of maintenance of a fidelity bond of not less than one hundred thousand dollars (\$100,000).

" § 58-537. *Committee on Third Party Administrators.*--The Commissioner is authorized to appoint a Committee on Third Party Administrators in conformance with the provisions of G.S. 58-7.4."

Sec. 2. This act shall become effective September 1, 1987.

In the General Assembly read three times and ratified this the 24th day of July, 1987.

S.B. 524

CHAPTER 677

AN ACT TO PROVIDE ADJUSTMENTS TO COSTS IN ELECTRIC UTILITY RATEMAKING AND TO STUDY THE QUESTION OF CONTINUING THE AUTHORITY FOR TRUE-UPS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 62-133.2 reads as rewritten:

"§ 62-133.2. *Fuel charge adjustments for electric utilities.*--(a) The Commission may allow electric utilities to charge a uniform increment or decrement as a rider to their rates for changes in the cost of fuel and the fuel component of purchased power used in providing their North Carolina customers with electricity from the cost of fuel and the fuel component of purchased power established in their previous general rate case.

(b) For each electric utility engaged in the generation and production of electric power by fossil or nuclear fuels, the Commission shall hold a hearing within 12 months of the last general rate case order and determine whether an increment or decrement rider is required to reflect actual changes in the cost of fuel and the fuel cost component of purchased power over or under base rates established in the last preceding general rate case. Additional hearings shall be held on an annual basis but only one hearing for each such electric utility may be held within 12 months of the last general rate case.

(c) Each electric utility shall submit to the Commission for the hearing verified annualized information and data in such form and detail as the Commission may require, for an historic 12-month test period, relating to:

- (1) Purchased cost of fuel used in each generating facility owned in whole or in part by the utility.
- (2) Fuel procurement practices and fuel inventories for each facility.
- (3) Burned cost of fuel used in each generating facility.
- (4) Plant capacity factor for each generating facility.
- (5) Plant availability factor for each generating plant.
- (6) Generation mix by types of fuel used.
- (7) Sources and fuel cost component of purchased power used.

- (8) Recipients of and revenues received for power sales and times of power sales.
- (9) Test period kilowatt hour sales for the utility's total system and on the total system separated for North Carolina jurisdictional sales.

(d) The Commission shall provide for notice of a public hearing with reasonable and adequate time for investigation and for all intervenors to prepare for hearing. At the hearing the Commission shall receive evidence from the utility, the public staff, and any intervenor desiring to submit evidence, and from the public generally. In reaching its decision, the Commission shall consider all evidence required under subsection (c) of this section as well as any and all other competent evidence that may assist the Commission in reaching its decision including changes in the price of fuel consumed and changes in the price of the fuel in the fuel component of purchased power occurring within a reasonable time (as determined by the Commission) after the test period is closed. ~~The Commission may also consider, but is not bound by, the fuel costs incurred by the utility and the actual recovery under the rate in effect during the test period as well as any and all other competent evidence that may assist the Commission in reaching its decision including changes in the price of fuel consumed and changes in price of the fuel in the fuel component of purchased power occurring within a reasonable time (as determined by the Commission) after the test period is closed. The Commission shall incorporate in its fuel cost determination under this subsection the experienced over-recovery or under-recovery of reasonable fuel expenses prudently incurred during the test period, based upon the prudent standards set pursuant to subsection (d1) of this section, in fixing an increment or decrement rider. The Commission shall use deferral accounting, and consecutive test periods, in complying with this subsection, and the over-recovery or under-recovery portion of the increment or decrement shall be reflected in rates for 12 months, notwithstanding any changes in the base fuel cost in a general rate case. The burden of proof as to the correctness and reasonableness of the charge shall be on the utility. The burden of proof as to the correctness and reasonableness of the charge and as to whether the fuel charges were reasonably and prudently incurred shall be on the utility. The Commission shall allow only that portion, if any, of a requested fuel adjustment that is based on adjusted and reasonable fuel expenses prudently incurred under efficient management and economic operations. In evaluating whether fuel expenses were reasonable and prudently incurred, the Commission shall apply the rule adopted pursuant to subsection (d1). To the extent that the Commission determines that an increment or decrement to the rates of the utility~~

due to changes in the cost of fuel and the fuel cost component of purchased power over or under base fuel costs established in the preceding general rate case is just and reasonable, the Commission shall order that the increment or decrement become effective for all sales of electricity and remain in effect until changed in a subsequent general rate case or annual proceeding under this section.

(d1) Within one year after ratification of this act, for the purposes of setting fuel rates, the Commission shall adopt a rule that establishes prudent standards and procedures with which it can appropriately measure management efficiency in minimizing fuel costs.

(e) If the Commission has not issued an order pursuant to this section within 120 days of a utility's submission of annual data under subsection (c) of this section, the utility may place the requested fuel adjustment into effect. If the change in rate is finally determined to be excessive, the utility shall make refund of any excess plus interest to its customers in a manner ordered by the Commission.

(f) Nothing in this section shall relieve the Commission from its duty to consider the reasonableness of fuel expenses in a general rate case and to set rates reflecting reasonable fuel expenses pursuant to G.S. 62-133."

Sec. 2. The enactment of this act shall be construed as clarifying rather than changing the meaning of G.S. 62-133.2 as it was previously worded and as construed by the Utilities Commission in Commission Rule R8-55 so that electric utilities will recover only their reasonable fuel expenses prudently incurred, including the fuel cost component of purchased power, with no over-recovery or under-recovery, in a manner that will serve the public interest.

Sec. 3. Until the Commission has formally adopted a rule as prescribed by subsection (d1) of G.S. 62-133.2 all fuel charge adjustment proceedings shall be heard and decided pursuant to the applicable provisions of subsections (a), (b), (c), (d), (e) and (f) of G.S. 62-133.2 and Commission Rule R8-55.

Sec. 4. The Joint Legislative Utility Review Committee shall study the matter of recovery or "true-up" of fuel costs, the matter of fuel charge adjustments, and the question of how efficient, cost effective management of electric utilities can be assured, and shall report its findings and recommendations to the General Assembly prior to the convening of the 1989 Session of the General Assembly. This study shall include, although it is not limited to, the following:

1. Whether a "true-up" procedure should be a part of the rate structure.
2. Whether fuel charge adjustments should be continued.
3. If either fuel charge adjustments or "true-ups" are continued, whether the present practice of requiring an annual proceeding should be maintained or some other procedure adopted.
4. Whether the Utilities Commission should be required to adopt other rules that establish prudent standards against which it may appropriately measure management efficiency in general, not just in the area of minimizing fuel costs, and whether such rules should place the burden of proving management efficiency on the utility in any proceeding involving charges to customers.
5. Whether the Utilities Commission should be required to devise a system by which the management and operation of the electric utilities operating in the State can be compared, and whether such comparisons should be required to be published on a regular basis.

Sec. 5. G.S. 62-133.2 is repealed in its entirety effective July 1, 1989.

Sec. 6. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 24th day of July, 1987.

S.B. 772

CHAPTER 678

AN ACT TO ALLOW TEMPORARY RULES FOR THE ISSUANCE OF BONDS FOR PRIVATE COLLEGES.

The General Assembly of North Carolina enacts:

Section 1. Notwithstanding G.S. 150B-13, the North Carolina Educational Facilities Finance Agency may, until six months from the effective date of this act, adopt temporary rules providing for the issuance of bonds for private colleges to carry out the purposes of Chapter 115E of the General Statutes without prior notice or hearing or upon any abbreviated notice or hearing the Agency finds practicable. The Agency shall begin normal rule-making procedures on permanent rules in accordance with Article 2 of Chapter 150B at the same time it adopts a temporary rule. Temporary rules adopted under this section shall be published by the Director of the Office of Administrative Hearings in the North Carolina Register and shall be effective for a period of not longer than 180 days.

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 24th day of July, 1987.

S.B. 145

CHAPTER 679

AN ACT TO PROVIDE FOR THE COURT OF APPEALS TO HEAR CERTAIN APPEALS IN WHICH LIFE SENTENCES ARE IMPOSED.

The General Assembly of North Carolina enacts:

Section 1. G.S. 7A-27(a) reads as rewritten:

"(a) ~~From a judgement of a superior court which includes a sentence of death or imprisonment for life, unless the judgement was based on a plea of guilty or nolo contendere, appeal~~ Appeal lies of right directly to the Supreme Court in all cases in which the defendant is convicted of murder in the first degree and the judgment of the superior court includes a sentence of death or imprisonment for life."

Sec. 2. This act shall become effective upon ratification, and applies to all judgments containing sentences of life imprisonment entered on or after that date.

In the General Assembly read three times and ratified this the 24th day of July, 1987.

S.B. 861

CHAPTER 680

AN ACT TO PERMIT A TAXPAYER TO FILE A LATE APPLICATION FOR PROPERTY TAX EXEMPTION OR EXCLUSION FOR LISTED PROPERTY, AND TO REQUIRE A TAXPAYER WHOSE PROPERTY IS APPRAISED BY THE DEPARTMENT OF REVENUE TO APPLY TO THE DEPARTMENT INSTEAD OF TO THE COUNTY ASSESSOR FOR EXEMPTION OR EXCLUSION OF THE PROPERTY FROM TAXATION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-282.1(a) is amended as follows:

(1) by deleting the second sentence of that subsection and substituting the following sentences to read:

"Except as provided below, an owner claiming exemption or exclusion shall annually file an application for exemption or exclusion during the listing period. If the property for which the exemption or exclusion is claimed is appraised by the Department of Revenue, the application shall be filed with the Department. Otherwise, the

application shall be filed with the assessor of the county in which the property is situated."

(2) by deleting the third sentence of that subsection;

(3) by rewriting the fifth and sixth sentences of that subsection to read:

"Each application filed with the Department of Revenue or an assessor shall be submitted on a form approved by the Department. Application forms shall be made available by the assessor and the Department, as appropriate."; and

(4) by rewriting subdivision (4) to read:

"(4) Upon a showing of good cause by the applicant for failure to make a timely application, an application for exemption or exclusion filed after the close of the listing period may be approved by the Department of Revenue, the board of equalization and review, the board of county commissioners, or the governing body of a municipality, as appropriate. An untimely application for exemption or exclusion approved under this subdivision applies only to property taxes levied by the county or municipality in the calendar year in which the untimely application is filed."

Sec. 2. G.S. 105-282.1(b) is amended as follows:

(1) by deleting the first sentence of that subsection and substituting the following sentences to read:

"The Department of Revenue or the assessor to whom an application for exemption or exclusion is submitted shall review the application and either approve or deny the application. Approved applications shall be filed and made available to all taxing units in which the exempted or excluded property is situated. If the Department denies an application for exemption or exclusion, it shall notify the taxpayer, who may appeal the denial to the Property Tax Commission.";

(2) by deleting the phrase "If an application for exemption or exclusion is denied by the tax supervisor, he" in the second sentence of that subsection and substituting the phrase "If an assessor denies an application for exemption or exclusion, he"; and

(3) by making that part of subsection (b) beginning with the second sentence, as amended by this act, a separate paragraph.

Sec. 3. G.S. 105-282.1(c) is amended as follows:

(1) by rewriting the first and second sentences of that subsection to read:

"When an owner of property that may be eligible for exemption or exclusion neither lists the property nor files an application for exemption or exclusion, the assessor or the Department of Revenue, as appropriate, shall proceed to discover the property. If, upon appeal, the owner demonstrates that the property meets the conditions

for exemption or exclusion, the body hearing the appeal may approve the exemption or exclusion.”;

(2) by inserting between the words "the" and "county" in the last sentence of that subsection the words "Department or the"; and

(3) by deleting the words "other" and "also" in the last sentence of that subsection.

Sec. 4. The first sentence of G.S. 105-290(b) is rewritten to read:

"The Property Tax Commission shall hear and decide appeals from decisions concerning the listing, appraisal, or assessment of property made by county boards of equalization and review and boards of county commissioners."

Sec. 5. The first sentence of G.S. 105-290(b)(2) is rewritten to read:

"When an appeal is filed, the Property Tax Commission shall provide a hearing before representatives of the Commission or the full Commission as specified in this subdivision."

Sec. 6. G.S. 105-325(a)(5) is amended by deleting the period at the end of that subdivision and adding the phrase "or property exempted or excluded from taxation pursuant to G.S. 105-282.1(a)(4)."

Sec. 7. This act shall become effective January 1, 1988.

In the General Assembly read three times and ratified this the 27th day of July, 1987.

S.B. 862

CHAPTER 681

AN ACT TO PROVIDE REASONABLE REGULATION OF PREFERRED PROVIDER CONTRACTS FOR HEALTH SERVICES.

The General Assembly of North Carolina enacts:

Section 1. The third sentence of G.S. 57-16.1(e) is amended by deleting the period and substituting the following:

", and the plan shall consider all pending applications for participation and give reasons for any rejections on at least an annual basis."

Sec. 2. The third sentence of G.S. 58-260.6(e) is amended by deleting the period and substituting the following:

", and the plan shall consider all pending applications for participation and give reasons for any rejections on at least an annual basis."

Sec. 3. The second sentence of G.S. 57-16.1(d) is amended by deleting the period and substituting the following:

", except that payments for services rendered by such non-participating providers may not be reduced by more than twenty percent (20%) of payments that would be made to participating providers under coverage for the same services. This percentage limitation shall not require any waiver of copayments or waiver of deductibles in determining payments for services rendered by non-participating providers."

Sec. 4. G.S. 57-16.1(d) is amended by inserting the following at the beginning of the fourth sentence:

"Except as provided in this subsection,".

Sec. 5. The second sentence of G.S. 58-260.6(d) is amended by deleting the period and substituting the following:

", except that payments for services rendered by such non-participating providers may not be reduced by more than twenty percent (20%) of payments that would be made to participating providers under coverage for the same services. This percentage limitation shall not require any waiver of copayments or waiver of deductibles in determining payments for services rendered by non-participating providers."

Sec. 6. G.S. 58-260.6(d) is amended by inserting the following at the beginning of the fourth sentence:

"Except as provided in this subsection,".

Sec. 7. This act is effective upon ratification, and it shall apply to all preferred provider contracts entered into or renewed after that date.

In the General Assembly read three times and ratified this the 27th day of July, 1987.

H.B. 663

CHAPTER 682

AN ACT TO PROVIDE QUALIFIED IMMUNITY FROM CIVIL LIABILITY FOR LIBEL FOR MEMBERS OF NURSING HOME ADVISORY COMMITTEES AND DOMICILIARY HOME ADVISORY COMMITTEES .

The General Assembly of North Carolina enacts:

Section 1. G.S. 131E-128 is amended by adding a new subsection to read:

"(i) Any written communication made by a member of a nursing home advisory committee within the course and scope of the member's duties, as specified in G.S. 131E-128, shall be privileged to the extent provided in this subsection. This privilege shall be a defense in a cause of action for libel if the member was acting in good faith and

the statements or communications do not amount to intentional wrongdoing.

To the extent that any nursing home advisory committee or any member thereof is covered by liability insurance, that committee or member shall be deemed to have waived the qualified immunity herein to the extent of indemnification by insurance."

Sec. 2. G.S. 131D-31 is amended by adding a new subsection to read:

"(i) Any written communication made by a member of a domiciliary home advisory committee within the course and scope of the member's duties, as specified in G.S. 131D-32, shall be privileged to the extent provided in this subsection. This privilege shall be a defense in a cause of action for libel if the member was acting in good faith and the statements and communications do not amount to intentional wrongdoing.

To the extent that any domiciliary home advisory committee or any member thereof is covered by liability insurance, that committee or member shall be deemed to have waived the qualified immunity herein to the extent of indemnification by insurance."

Sec. 3. This act shall become effective October 1, 1987.

In the General Assembly read three times and ratified this the 27th day of July, 1987.

H.B. 744

CHAPTER 683

AN ACT TO ESTABLISH THE LAKE WYLIE MARINE COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. For purposes of this act:

(1) "Board" means the board of commissioners of one of the three counties.

(2) "Commission" means the Lake Wylie Marine Commission or its governing board as the case may be.

(3) "Commissioner" means a member of the governing board of the Lake Wylie Marine Commission.

(4) "Three counties" means Mecklenburg and Gaston Counties, North Carolina, and York County, South Carolina.

(5) "Joint resolution" means a resolution or ordinance substantially identical in content adopted separately by the governing boards in each of the three counties.

(6) "Lake Wylie" means the impounded body of water along the Catawba River in the three counties extending from the base of Mountain Island Dam downstream to the Catawba Dam.

(7) "Shoreline area" means, except as modified by a joint resolution, the area within the three counties lying within 1000 feet of the mean high water line (570 feet) on Lake Wylie. In addition, the shoreline area includes all islands within Lake Wylie and all peninsulas extending into the waters of Lake Wylie.

(8) "Wildlife Commission" means, except as restricted by a joint resolution, the North Carolina Wildlife Resources Commission and the South Carolina Wildlife and Marine Resources Department.

Sec. 2. The three counties may by joint resolution create the Lake Wylie Marine Commission. Upon its creation the Commission has the powers, duties and responsibilities conferred upon it by joint resolution, subject to the provisions of each applicable state. The provisions of any joint resolution may be modified, amended, or rescinded by a subsequent joint resolution. A county may unilaterally withdraw from participation as provided by any joint resolution or the provisions of this act, once the commission has been created, and any county may unilaterally withdraw from the commission at the end of any budget period upon ninety days prior written notice. Upon the effectuation of the withdrawal, the Commission is dissolved, and all property of the Commission must be distributed to or divided among the three counties and any other public agency or agencies serving the Lake Wylie area in a manner considered equitable by the Commission by resolution adopted by it prior to dissolution.

Sec. 3. Upon its creation, the commission shall have a governing board of seven. Except as otherwise provided for the first four-year period, each commissioner shall serve either a three or a four-year term, with commissioners to serve overlapping terms so that two commissioner appointments are made each year. Upon creation of the Commission, the Board of Commissioners of Gaston County shall appoint three commissioners, and the boards of the other two counties shall appoint two each. These initial appointees shall serve until September thirtieth following their appointment. Thereafter, appointments shall be made for terms beginning each October first by the respective boards of the three counties as follows:

(1) First Year: Three commissioners from Gaston, one appointed for a one-year term, one appointed for a three-year term and one appointed for a four-year term; two commissioners from Mecklenburg, one appointed for a one-year term and one appointed for a two-year term; two commissioners from York, one appointed for a two-year term and one appointed for a three-year term.

(2) Second Year: Two commissioners from Mecklenburg, one appointed for a three-year term and one appointed for a four-year term.

(3) Third year: Two commissioners from York, one appointed for a three-year term and one appointed for a four-year term.

(4) Fourth Year: Two commissioners from Gaston, one appointed for a three-year term and one appointed for a four-year term.

(5) Fifth and Succeeding Years: Appointments for one three-year and one four-year term in rotation by county in the order set out above.

On the death of a commissioner, resignation, incapacity or inability to serve, as determined by the board appointing such commissioner, or removal of the commissioner for cause, as determined by the board appointing such commissioner, the board affected may appoint another commissioner to fill the unexpired term.

Sec. 4. The joint resolution of the three counties shall state the terms relating to compensation to commissioners, if any, compensation of consultants and staff members employed by the Commission, and reimbursement of expenses incurred by commissioners, consultants, and employees. The Commission shall be governed by such budgetary and accounting procedures as may be specified by joint resolution.

Sec. 5. Upon creation of the Commission, its governing board shall meet at a time and place agreed upon by the boards of the three counties concerned. The commissioners shall elect a chairman and such officers as they may choose. All officers shall serve one-year terms. The governing board shall adopt such rules and regulations as it may deem necessary, not inconsistent with the provisions of this act or of any joint resolution or the laws of the appropriate state, for the proper discharge of its duties and for the governance of the commission. In order to conduct business, a quorum must be present. The chairman may adopt those committees as may be authorized by such rules and regulations. The commission shall meet regularly at such times and places as may be specified in its rules and regulations or in any joint resolution. However, meetings of the commission must be held in all three counties on a rotating basis so that an equal number of meetings is held in each county. Special meetings may be called as specified in the rules and regulations. As to meetings held within South Carolina, the provisions of that state's Open Meetings Law, §30-4-60 through §30-4-110, Code of Laws of South Carolina 1976 shall apply. As to meetings held within North Carolina, the provisions of that State's Open Meetings Law, Article 33C of Chapter 143 of the North Carolina General Statutes shall

apply.

Sec. 6. (a) Within the limits of funds available to it and subject to the provisions of this act and of any joint resolution, the Commission may:

- (1) Hire and fix the compensation of permanent and temporary employees and staff as it may deem necessary in carrying out its duties;
- (2) Contract with consultants for such services as it may require;
- (3) Contract with the States of North Carolina, South Carolina, or the federal government, or any agency or department, or subdivision of them, for property or services as may be provided to or by these agencies and carry out the provisions of these contracts;
- (4) Contract with persons, firms, and corporations generally as to all matters over which it has a proper concern, and carry out the provisions of contracts;
- (5) Lease, rent, purchase, or otherwise obtain suitable quarters and office space for its employees and staff, and lease, rent, purchase, or otherwise obtain furniture, fixtures, vessels, vehicles, firearms, uniforms, and other supplies and equipment necessary or desirable for carrying out the duties imposed in or under the authority of this act.
- (6) Lease, rent, purchase, construct, otherwise obtain, maintain, operate, repair, and replace, either on its own or in cooperation with other public or private agencies or individuals, any of the following: boat docks, navigation aids, waterway markers, public information signs and notices, and other items of real and personal property designed to enhance public safety in Lake Wylie and its shoreline area, or protection of property in the shoreline area subject however to the provisions of Title 50 of the 1976 Code of Laws of South Carolina or regulations promulgated under that title as to property within South Carolina, and Chapter 113 of the General Statutes of North Carolina and rules promulgated under that Chapter as to property within North Carolina.

(b) The Commission may accept, receive, and disburse in furtherance of its functions any funds, grants, services, or property made available by the federal government or its agencies or subdivisions, by the States of North Carolina or South Carolina or their agencies or subdivisions, or by private and civic sources.

(c) The governing boards of the three counties may appropriate funds to the Commission out of surplus funds or funds derived from nontax sources. They may appropriate funds out of tax revenues and may also levy annually taxes for the payments of such appropriation as a special purpose, in addition to any allowed by the Constitution, or in North Carolina as provided by G.S. 153A-149.

(d) The Commission shall be subject to those audit requirements as may be specified in any joint resolution.

(e) In carrying out its duties and either in addition to or in lieu of exercising various provisions of the above authorization, the Commission may, with the agreement of the governing board of the county concerned, utilize personnel and property of or assign responsibilities to any officer or employee of any of the three counties. Such contribution in kind, if substantial, may with the agreement of the other two counties be deemed to substitute in whole or in part for the financial contribution required of such county in support of the Commission.

(f) Unless otherwise specified by joint resolution, each of the three counties shall annually contribute an equal financial contribution to the Commission in an amount appropriate to support the activities of the Commission in carrying out its duties.

Sec. 7. (a) A copy of the joint resolution creating the Commission and of any joint resolution amending or repealing the joint resolution creating the Commission shall be filed with the Executive Director of the North Carolina Wildlife Resources Commission and the Executive Director of the South Carolina Department of Wildlife and Marine Resources. When the Executive Director receives resolutions that are in substance identical from all three counties concerned, the executive Director shall within 10 days so certify and distribute a certified single resolution text to the following:

- (1) The Secretary of State of North Carolina and the Secretary of State of South Carolina;
- (2) The clerk to the governing board of each of the three counties;
- (3) The clerk of superior court of Mecklenburg and Gaston Counties and the clerk of court of York County. Upon request, the Executive Director also shall send a certified single copy of any and all applicable joint resolutions to the chairman of the Commission;
- (4) A newspaper of general circulation in the three counties.

(b) Unless a joint resolution specifies a later date, it shall take effect when the Executive Director's certified text has been submitted to the Secretaries of State for filing. Certifications of the Executive

Director under the seal of the Commission as to the text or amended text of any joint resolution and of the date or dates of submission to the Secretaries of State shall be admissible in evidence in any court. Certifications by any clerk of superior court or county clerk of court of the text of any certified resolution filed with him by the Executive Director is admissible in evidence and the Executive Director's submission of the resolution for filing to the clerk shall constitute prima facie evidence that such resolution was on the date of submission also submitted for filing with the Secretary of State. Except for the certificate of a clerk as to receipt and date of submission, no evidence may be admitted in court concerning the submission of the certified text of any resolution by the Executive Director to any person other than the Secretary of State.

Sec. 8. (a) Except as limited in subsection (b) of this section, by restrictions in any joint resolution, and by other supervening provisions of law, the Commission may make regulations applicable to Lake Wylie and its shoreline area concerning all matters relating to or affecting the use of Lake Wylie. These regulations may not conflict with or supersede provisions of general or special acts or of regulations of state agencies promulgated under the authority of general law. No regulations adopted under this section may be adopted by the Commission except after public hearing, with publication of notice of the hearing being given in a newspaper of general circulation in the three counties at least 10 days before the hearing. In lieu of or in addition to passing regulations supplementary to state law and regulations concerning the operation of vessels on Lake Wylie, the Commission may, after public notice, request that the North Carolina Wildlife Resources Commission and South Carolina Department of Wildlife and Marine Resources pass local regulations on this subject in accordance with the procedure established by appropriate state law.

(b) Violation of any regulation of the Commission commanding or prohibiting an act shall be a misdemeanor punishable by a fine not to exceed two hundred dollars (\$200.00) or 30 days imprisonment.

(c) The regulations promulgated under this section take effect upon passage or upon such dates as may be stipulated in the regulations except that no regulation may be enforced unless adequate notice of the regulation has been posted in or on Lake Wylie or its shoreline area. Adequate notice as to a regulation affecting only a particular location may be by a sign, uniform waterway marker, posted notice, or other effective method of communicating the essential provisions of the regulation in the immediate vicinity of the location in question. Where a regulation applies generally as to Lake Wylie or

its shoreline area, or both, there must be a posting of notices, signs, or markers communicating the essential provisions in at least three different places throughout the area and it must be printed in a newspaper of general circulation in the three counties.

(d) A copy of each regulation promulgated under this section must be filed by the Commission with the following persons:

- (1) The Secretaries of State of North and South Carolina;
- (2) The clerk of superior court of Mecklenburg and Gaston County and the clerk of court of York County;
- (3) The Executive Directors of the Wildlife Resources Commission of North Carolina and South Carolina Wildlife and Marine Resources Department.

(e) Any official designated in subsection (d) above may issue certified copies of regulations filed with him under the seal of his office. Such certified copies may be received in evidence in any proceeding.

(f) Publication and filing of regulations promulgated under this section as required above is for informational purposes and shall not be a prerequisite to their validity if they in fact have been duly promulgated, the public has been notified as to the substance of regulations, a copy of the text of all regulations is in fact available to any person who may be affected, and no party to any proceeding has been prejudiced by any defect that may exist with respect to publication and filing. Rules and regulations promulgated by the Commission under the provisions of other sections of this act relating to internal governance of the Commission need not be filed or published. Where posting of any sign, notice, or marker or the making of other communication is essential to the validity of a regulation duly promulgated, it shall be presumed in any proceeding that prior notice was given and maintained and the burden lies upon the party asserting to the contrary to prove lack of adequate notice of any regulation.

Sec. 9. (a) Where a joint resolution so provides, all law enforcement officers, or those officers as may be designated in the joint resolution, with territorial jurisdiction as to any part of Lake Wylie or its shoreline area shall, within the limitations of their subject matter jurisdiction, have the authority of peace officers in enforcing the laws over all of Lake Wylie and its shoreline area.

(b) Where a joint resolution provides it, the Commission may hire special officers to patrol and enforce the laws on Lake Wylie and its shoreline area. These special officers have and exercise all the powers of peace officers generally within the area in question and shall take the oaths and be subject to all provisions of law relating to

law enforcement officers.

(c) Every criminal violation must be tried in the county where it occurred. However, a certificate of training by the South Carolina Criminal Justice Academy or a similar certificate issued by the North Carolina Criminal Justice Education and Training Standards Commission or the North Carolina Sheriffs' Education and Training Standards Commission will suffice for certification in both states for the purposes of this act.

(d) Where a law enforcement officer with jurisdiction over any part of Lake Wylie or its shoreline area is performing duties relating to the enforcement of the laws on Lake Wylie or in its shoreline area, he has such extraterritorial jurisdiction as may be necessary to perform his duties. These duties include investigation of crimes an officer reasonably believes have been, or are about to be, committed within the area in question. This included traversing by reasonable routes from one portion of such area to another although across territory not within the boundaries of Lake Wylie and its shoreline area; conducting prisoners in custody to such court or detention facilities as may be authorized by law, although this may involve going outside the area in question; execution of process connected with any criminal offense alleged to have been committed within the boundaries in question, except that such process may not be executed by virtue of this provision beyond the boundaries of the three counties. This also includes continuing pursuit of and arresting any violator or suspected violator as to which grounds for arrest arose within the area in question.

(e) Where law enforcement officers are given additional territorial jurisdiction under the provisions of this section, this shall be deemed an extension of the duties of the office held and no officer shall take any additional oath or title of office.

Sec. 10. This act shall become effective on the later of:

- (1) March 1, 1988; and
- (2) upon enactment by the State of South Carolina and upon approval by the Congress of the United States.

Either North Carolina or South Carolina may withdraw from this Compact by enacting a statute repealing the same, but no such withdrawal shall become effective until the Governor of the withdrawing state shall have sent formal notice in writing to the Governor of each other party state informing said Governors of the action of the legislature in repealing the Compact and declaring an intention to withdraw. Such withdrawal shall be effective on a date set by the withdrawing state, but not less than 90 days after enactment of the withdrawal statute. In case of such withdrawal, the property of the Commission shall be divided in an equitable manner by the

Commission as if dissolution had occurred under Section 2 of this act.

In the General Assembly read three times and ratified this the 27th day of July, 1987.

H.B. 754

CHAPTER 684

AN ACT TO EXTEND THE COVERAGE OF THE STATE TORT CLAIMS ACT TO COMMUNITY COLLEGES AND TECHNICAL COLLEGES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143-291 reads as rewritten:

"§ 143-291. *Industrial Commission constituted a court to hear and determine claims; damages.*--The North Carolina Industrial Commission is hereby constituted a court for the purpose of hearing and passing upon tort claims against the State Board of Education, the Board of Transportation, and all other departments, institutions and agencies of the State. The Industrial Commission shall determine whether or not each individual claim arose as a result of the negligence of any officer, employee, involuntary servant or agent of the State while acting within the scope of his office, employment, service, agency or authority, under circumstances where the State of North Carolina, if a private person, would be liable to the claimant in accordance with the laws of North Carolina. If the Commission finds that there was such negligence on the part of an officer, employee, involuntary servant or agent of the State while acting within the scope of his office, employment, service, agency or authority, which was the proximate cause of the injury and that there was no contributory negligence on the part of the claimant or the person in whose behalf the claim is asserted, the Commission shall determine the amount of damages which the claimant is entitled to be paid, including medical and other expenses, and by appropriate order direct the payment of such damages by the department, institution or agency concerned, but in no event shall the amount of damages awarded exceed the sum of one hundred thousand dollars (\$100,000) cumulatively to all claimants on account of injury and damage to any one person. Community colleges and technical colleges shall be deemed State agencies for purposes of this Article."

Sec. 2. G.S. 143-300.2 reads as rewritten:

" § 143-300.2. *Definitions.*--Unless the context otherwise requires, the definitions contained in this section govern the construction of this Article.

- (1) 'Civil or criminal action or proceeding' includes any case, prosecution, special proceedings, or administrative proceeding in or before any court or agency of this State or any other state or the United States.
- (2) 'Employee' includes an officer, agent, or employee but does not include an independent contractor.
- (3) 'Employment' includes office, agency, or employment.
- (4) 'The State' includes all departments, agencies, boards, commissions, institutions, bureaus, and authorities of the State. Community colleges and technical colleges shall be deemed State agencies for purposes of this Article."

Sec. 3. This act shall become effective on September 1, 1987, and shall apply to causes of action arising on or after that date.

In the General Assembly read three times and ratified this the 27th day of July, 1987.

H.B. 1134

CHAPTER 685

AN ACT TO EXEMPT REAL ESTATE TRANSFER TAXES
TRANSFERS TO SECURED LENDERS FORECLOSING LOANS
OR ACCEPTING DEEDS IN LIEU OF FORECLOSURE.

The General Assembly of North Carolina enacts:

Section 1. Chapter 45 of the North Carolina General Statutes is amended by adding a new section as follows:

" § 45-45.2. *Transfer taxes not applicable.*--Notwithstanding any other provision of law, no excise tax on instruments conveying an interest in real property, except that levied by Article 8E of Chapter 105 of the General Statutes, shall apply to instruments conveying an interest in property as the result of foreclosure or in lieu of foreclosure to the holder of the security interest being foreclosed or subject to being foreclosed."

Sec. 2. This act is effective upon ratification and applies to instruments executed on or after the date of ratification.

In the General Assembly read three times and ratified this the 27th day of July, 1987.

H.B. 1160

CHAPTER 686

AN ACT REGARDING ACCESS TO AND MAINTENANCE OF
PRIVATE GRAVES.

The General Assembly of North Carolina enacts:

Section 1. A new Article is added to Chapter 65 of the General Statutes to read:

"ARTICLE 10.

"Access to and Maintenance of Private Graves.

" § 65-74. *Entering private property to maintain or visit a private grave with consent.*--Any of the following persons may, with the consent of the landowner, enter the property of another to discover, restore, maintain, or visit a private grave:

- (1) A descendant of the person whose remains are reasonably believed to be interred in the grave;
- (2) A descendant's designee; or
- (3) Any other person who was personally acquainted with or has a special personal interest in the deceased.

" § 65-75. *Entering private property to maintain or visit a private grave without consent.*--(a) If the consent of the landowner cannot be obtained, any person listed in G.S. 65-74(1), (2), or (3) may commence a special proceeding by petitioning the clerk of superior court of the county in which he has reasonable grounds to believe the deceased is buried, for an order allowing him to enter the property to discover, restore, maintain, or visit the grave. The petition shall be verified. This special proceeding shall be in accordance with the provisions of Article 33 of Chapter 1 of the General Statutes. The clerk shall issue an order allowing the petitioner to enter the property if he finds that:

- (1) There are reasonable grounds to believe that the grave is located on the property or that it is reasonably necessary to cross the landowner's property to reach the grave;
 - (2) The petitioner, or his designee, is a descendant of the deceased, or that the petitioner was personally acquainted with or had a special interest in the deceased; and
 - (3) The entry on the property would not unreasonably interfere with the enjoyment of the property by the landowner.
- (b) The clerk's order may:
- (1) Specify the dates and the daylight hours that the petitioner may enter and remain on the property;
 - (2) Grant to the petitioner the right to enter the landowner's property once a month after the time needed for initial restoration of the grave; or
 - (3) Specify a reasonable route from which the petitioner may not deviate in all entries and exits from the property."

Sec. 2. This act shall become effective October 1, 1987.

In the General Assembly read three times and ratified this the 27th day of July, 1987.

S.B.784

CHAPTER 687

AN ACT TO PROVIDE THAT PHYSICIANS WHO DISPENSE
PRESCRIPTION DRUGS MUST REGISTER AND COMPLY
WITH PHARMACY REGULATIONS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 90-85.21 is amended by designating the current text as subsection (a) and adding a new subsection to read:

"(b) Each physician who dispenses prescription drugs, for a fee or other charge, shall annually register with the Board on the form provided by the Board, and with the licensing board having jurisdiction over the physician. Such dispensing shall comply in all respects with the relevant laws and regulations that apply to pharmacists governing the distribution of drugs, including packaging, labeling, and record keeping. Authority and responsibility for disciplining physicians who fail to comply with the provisions of this subsection are vested in the licensing board having jurisdiction over the physician. The form provided by the Board under this subsection shall be as follows:

Application For Registration
With The Pharmacy Board
As A Dispensing Physician

1 _____
Name and Address of Dispensing
Physician

2 _____
Affix Dispensing Label Here

3. Physician's North Carolina License Number _____

4. Are you currently practicing in a professional association registered with the North Carolina Board of Medical Examiners?
Yes _____ No _____. If yes, enter the name and registration number of the professional corporation:

5. I certify that the information is correct and complete.

Signature

Date

Sec. 2. This act shall become effective January 1, 1988.

In the General Assembly read three times and ratified this the 28th day of July, 1987.

H.B. 744

CHAPTER 688

AN ACT TO ESTABLISH A "NO-WAKE" SPEED ZONE FOR MOTORBOATS AT SUNSET HARBOR AND THE VILLAGE OF BALD HEAD ISLAND.

The General Assembly of North Carolina enacts:

Section 1. No person shall operate any motorboat or vessel at greater than no-wake speed upon any of the waters within the community of Sunset Harbor and the Village of Bald Head Island, provided that the restricted areas are marked in accordance with the Uniform Waterway Marking System by the community or its designee.

Sec. 2. "No-wake speed" is idle speed or a slow speed creating no appreciable wake.

Sec. 2.1. Any person who violates this act shall be guilty of a misdemeanor and on conviction thereof shall be subject to a fine not to exceed two hundred and fifty dollars (\$250.00).

Sec. 3. This law shall be enforced by officers of the Wildlife Resources Commission, and by the Brunswick County Sheriff.

Sec. 4. This act shall become effective August 1, 1987.

In the General Assembly read three times and ratified this the 28th day of July, 1987.

H.B. 927

CHAPTER 689

AN ACT TO REQUIRE THAT STATE JOB VACANCIES BE POSTED AND THAT CURRENT STATE EMPLOYEES RECEIVE PRIORITY CONSIDERATION FOR PROMOTIONS OVER OUTSIDE APPLICANTS WITH EQUAL QUALIFICATIONS.

The General Assembly of North Carolina enacts:

Section 1. The title of Article 2 of Chapter 126 of the General Statutes reads as rewritten:

"Salaries, Promotions, and Leave of State Employees."

Sec. 2. Article 2 of Chapter 126 is amended by adding a section after G.S. 126-7 to read:

"§ 126-7.1. *Posting requirement: State employees receive priority consideration.*--(a) All vacancies for which any State agency, department, or institution openly recruit shall be posted within at least the following:

- (1) The personnel office of the agency, department, or institution having the vacancy; and
- (2) The particular work unit of the agency, department, or institution having the vacancy

in a location readily accessible to employees. If the decision is made, initially or at any time while the vacancy remains open, to receive applicants from outside the recruiting agency, department, or institution, the vacancy shall be listed with the Office of State Personnel for the purpose of informing current State employees of such vacancy. The State agency, department, or institution may not receive approval from the Office of State Personnel to fill a job vacancy if the agency, department, or institution cannot prove to the satisfaction of the Office of State Personnel that it complied with these posting requirements. The agency, department, or institution which hires any person in violation of these posting requirements shall pay such person when employment is discontinued as a result of such violation for the work performed during the period of time between his initial employment and separation.

(b) Subsection (a) of this section does not apply to vacancies which must be filled immediately to prevent work stoppage or the protection of the public health, safety, or security.

(c) If a State employee:

- (1) Applies for another position of State employment; and
- (2) Has substantially equal qualifications as an applicant who is not a State employee

then the State employee shall receive priority consideration over the applicant who is not a State employee.

(d) 'Qualifications' within the meaning of subsection (c) of this section shall consist of:

- (1) Training or education;
- (2) Years of experience; and
- (3) Other skills, knowledge, and abilities that bear a reasonable functional relationship to the abilities and skills required in the job vacancy applied for."

Sec. 3. Article 8 of Chapter 126 of the General Statutes is amended by adding a section after G.S. 126-36.1 to read:

"§ 126-36.2. *Appeal to Personnel Commission by State employee denied notice of vacancy or priority consideration.*--Any State employee who has reason to believe that he was denied promotion due to the failure of the agency, department, or institution that had a job vacancy to:

- (1) Post notice of the job vacancy pursuant to G.S. 126-7.1(a) or;
- (2) Give him priority consideration pursuant to G.S. 126-7.1(c)

may appeal directly to the State Personnel Commission."

Sec 4. The State Personnel Director shall present a report to the 1989 General Assembly, no later than March 1, 1989, containing the following:

- (a) An assessment of the impact of this act on employing agencies and current State employees seeking promotional opportunities;
- (b) An assessment of the ability of State agencies to recruit and hire outside applicants for State government employment; and
- (c) An assessment of the appeals process set forth in G.S. 126-36.2, including the number of appeals filed as a result of this act.

Sec. 5. This act shall become effective October 1, 1987.

In the General Assembly read three times and ratified this the 31st day of July, 1987.

H.B. 1033

CHAPTER 690

AN ACT CREATING THE OFFENSE OF INTERFERING WITH AN EMERGENCY RADIO COMMUNICATION.

The General Assembly of North Carolina enacts:

Section 1. Article 36 of Chapter 14 of the General Statutes is amended by adding a new section to read:

"§ 14-286.2. *Interfering with emergency communication.*--(a) Offense. A person who, without authorization, intentionally interferes with an emergency radio communication, knowing that the communication is an emergency communication, and who is not making an emergency communication himself, is guilty of a misdemeanor and is punishable by:

- (1) A fine of up to one thousand dollars (\$1,000) and imprisonment for up to one year if, as a result of the interference, serious bodily injury or property damage in excess of one thousand dollars (\$1,000) occurs; or
- (2) A fine of up to five hundred dollars (\$500.00) and imprisonment for up to six months if a result described in subdivision (1) does not occur.

(b) 'Emergency Communication' Defined. As used in this section, the term 'emergency communication' means a communication not

governed by Federal law relating that an individual is or is reasonably believed to be in imminent danger of serious bodily injury or that property is or is reasonably believed to be in imminent danger of substantial damage."

Sec. 2. This act shall become effective October 1, 1987, and shall apply to offenses committed on or after that date.

In the General Assembly read three times and ratified this the 28th day of July, 1987.

H.B. 1088

CHAPTER 691

AN ACT TO PROVIDE FOR CLERKS OF SUPERIOR COURT TO
NOTIFY THE BOARD OF ELECTIONS OF FELONY
CONVICTIONS.

The General Assembly of North Carolina enacts:

Section 1. Chapter 163 of the General Statutes is amended by adding a new section to read:

"§ 163-69.2. *Removal for conviction of a felony.*--(a) On or before the fifteenth day of February, May, August, and November the Clerk of Superior Court of each county shall report to the County Board of Elections of that county the name, county of residence, and residence address if available, of each individual against whom a final judgment of conviction of a felony has been entered in that county in the preceding calendar quarter.

(b) Any county board of elections receiving a report under subsection (a) of this section about an individual who is a resident of another county in this State shall forward a copy of that report to the board of elections of that county as soon as possible.

(c) When a county board of elections receives a notice under subsections (a) or (b) of this section relating to a resident of that county, and that person is registered to vote in that county the board shall, after giving 30 days' written notice to the voter at his registration address, and if the voter makes no objection, remove the person's name from its registration records, provided, however, that if the voter notifies the board of his objection to the removal within 30 days of the notice, the chairman of the board of elections shall enter a challenge under G.S. 163-85(c)(5), and the notice under subsections (a) or (b) of this subsection shall be prima facie evidence for the preliminary hearing that the registrant was convicted of a felony."

Sec. 2. This act shall become effective with respect to reports due for calendar quarters ending after September 30, 1987.

In the General Assembly read three times and ratified this the 28th day of July, 1987.

S.B. 792

CHAPTER 692

AN ACT TO AUTHORIZE ALL COUNTIES AND CITIES TO
CONVEY PROPERTY IN LIEU OF APPROPRIATING FUNDS.

The General Assembly of North Carolina enacts:

Section 1. Article 12 of Chapter 160A of the General Statutes is amended by adding a new section to read:

"§ 160A-279. *Sale of property to entities carrying out a public purpose; procedure.*--(a) Whenever a city or county is authorized to appropriate funds to any public or private entity which carries out a public purpose, the city or county may, in lieu of or in addition to the appropriation of funds, convey by private sale to such an entity any real or personal property which it owns; provided no property acquired by the exercise of eminent domain may be conveyed under this section; provided that no such conveyance may be made to a for-profit corporation. The city or county shall attach to any such conveyance covenants or conditions which assure that the property will be put to a public use by the recipient entity. The procedural provisions of G.S. 160A-267 shall apply.

(b) Notwithstanding any other provision of law, this section applies only to cities and counties and not to any other entity which this Article otherwise applies to.

(c) The resolution or order required under G.S. 160A-267 for conveyances under this section must be approved by the unanimous affirmative vote of the council members or county board of commissioners, not counting vacancies or members excused from voting in order to be effective under this section.

(d) This section does not limit the right of any entity to convey property by private sale when that right is conferred by another law, public, or local."

Sec. 2. G.S. 160A-266(b) is amended by rewriting the second sentence in the first paragraph to read:

"Real property and personal property valued at five thousand dollars (\$5,000) or more for any one item or group of similar items may be exchanged as permitted by G.S. 160A-271, or may be sold by any method permitted in this Article other than private negotiation and sale, except as permitted in G.S. 160A-277 and 160A-279."

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 29th day of July, 1987.

AN ACT TO ELIMINATE THE DEATH PENALTY FOR PERSONS UNDER THE AGE OF SEVENTEEN.

The General Assembly of North Carolina enacts:

Section 1. G.S. 14-17 reads as rewritten:

" § 14-17. *Murder in the first and second degree defined; punishment.*-A murder which shall be perpetrated by means of poison, lying in wait, imprisonment, starving, torture, or by any other kind of willful, deliberate, and premeditated killing, or which shall be committed in the perpetration or attempted perpetration of any arson, rape or a sex offense, robbery, kidnapping, burglary, or other felony committed or attempted with the use of a deadly weapon shall be deemed to be murder in the first degree, and any person who commits such murder shall be punished with death or imprisonment in the State's prison for life as the court shall determine pursuant to ~~G.S. 15A-2000.~~ G.S. 15A-2000, except that any such person who was under 17 years of age at the time of the murder shall be punished with imprisonment in the State's prison for life. Provided, however, any person under the age of 17 who commits murder in the first degree while serving a prison sentence imposed for a prior murder or while on escape from a prison sentence imposed for a prior murder shall be punished with death or imprisonment in the State's prison for life as the court shall determine pursuant to G.S. 15A-2000. All other kinds of murder, including that which shall be proximately caused by the unlawful distribution of opium or any synthetic or natural salt, compound, derivative, or preparation of opium when the ingestion of such substance causes the death of the user, shall be deemed murder in the second degree, and any person who commits such murder shall be punished as a Class C felon."

Sec. 2. This act is effective upon ratification and shall only apply to persons indicted on or after that date.

In the General Assembly read three times and ratified this the 29th day of July, 1987.

AN ACT TO MAKE TECHNICAL AMENDMENTS REGARDING APPORTIONMENT OF THE FEDERAL ESTATE TAX BURDEN.

The General Assembly of North Carolina enacts:

Section 1. G.S. 28A-27-2(b) reads as rewritten:

"(b) In the event the decedent's will provides a method of apportionment of the tax different from the method provided in subsection (a) above, the method described in the will shall control. However, in the case of any will executed on or after October 1, 1986, ~~A~~ a general direction in the will that taxes shall not be apportioned, whether or not referring to this Article, but shall be paid from the residuary portion of the estate shall not, unless specifically stated otherwise, apply to taxes imposed on assets which are includible in the valuation of the decedent's gross estate for federal estate tax purposes only by reason of Sections 2041, 2042 or 2044 of the Internal Revenue Code of 1954 or corresponding provisions of any subsequent tax law. In the case of an estate administered under any will executed on or after October 1, 1986, ~~in~~ in the event that the estate tax computation involves assets described in the preceding sentence, unless specifically stated otherwise, apportionment shall be made against such assets and the tax so apportioned shall be recovered from the persons receiving such assets as provided in Sections 2206, 2207 or 2207A of the Internal Revenue Code of 1954 or corresponding provisions of any subsequent tax."

Sec. 2. G.S. 28A-27-5(a) reads as rewritten:

" (a) Any interest for which a deduction or exemption is ~~allowable~~ allowed under the federal revenue laws in determining the value of the decedent's net taxable estate, such as property passing to or in trust for a surviving spouse and gifts or bequests for charitable, public, or similar purposes, shall not be included in the computation provided for in Section 28A-27-2 to the extent of the allowable deduction or exemption. When such an interest is subject to a prior present interest which is not allowable as a deduction or exemption, such present interest shall not be included in the computation provided for in this Article and no tax shall be apportioned to or paid from principal."

Sec. 3. G.S. 28A-27-5(d) reads as rewritten:

"(d) To the extent that property passing to or in trust for a surviving spouse or any charitable, public, or similar gift or bequest does not constitute an ~~allowable~~ allowed deduction for purposes of the tax solely by reason of an inheritance tax or other death tax imposed upon and deductible from the property, the property shall not be included in the computation provided for in this Article, and to that extent no apportionment shall be made against the property. This section does not apply in any instance where the result will be to deprive the estate of a deduction otherwise allowable under Section 2053(d) of the Internal Revenue Code of 1954 of the United States or corresponding

provisions of any subsequent tax law, relating to deduction for State death taxes on transfers for public, charitable, or religious uses."

Sec. 4. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 29th day of July, 1987.

H.B. 637

CHAPTER 695

AN ACT TO AMEND THE DEFINITION OF ABUSED JUVENILES IN CHAPTER 7A.

The General Assembly of North Carolina enacts:

Section 1. G.S. 7A-517(1)c. is rewritten to read:

"Commits, permits, or encourages the commission of a violation of the following laws by, with, or upon the juvenile: first degree rape, as provided in G.S. 14-27.2; second degree rape as provided in G.S. 14-27.3; first degree sexual offense, as provided in G.S. 14-27.4; second degree sexual offense, as provided in G.S. 14-27.5; sexual act by a custodian, as provided in G.S. 14-27.7; crime against nature, as provided in G.S. 14-177; incest, as provided in G.S. 14-178 and 14-179; preparation of obscene photographs, slides or motion pictures of the juvenile, as provided in G.S. 14-190.5; employing or permitting the juvenile to assist in a violation of the obscenity laws as provided in G.S. 14-190.6; dissemination of obscene material to the juvenile as provided in G.S. 14-190.7 and G.S. 14-190.8; displaying or disseminating material harmful to the juvenile as provided in G.S. 14-190.14 and G.S. 14-190.15; first and second degree sexual exploitation of the juvenile as provided in G.S. 14-190.16 and G.S. 14-190.17; promoting the prostitution of the juvenile as provided in G.S. 14-190.18; and taking indecent liberties with the juvenile, as provided in G.S. 14-202.1, regardless of the age of the parties."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 29th day of July, 1987.

H.B. 725

CHAPTER 696

AN ACT CONCERNING TRAFFIC REGULATIONS AT THE GREENSBORO/HIGH POINT/WINSTON-SALEM REGIONAL AIRPORT.

The General Assembly of North Carolina enacts:

Section 1. Chapter 1273 of the Session Laws of 1953, as amended by Chapter 245, Session Laws of 1961, Chapter 354, Session Laws of 1975, and Chapter 431, Session Laws of 1983, is amended as follows:

(1) By adding to Section 2 after the last sentence, a new sentence to read:

"The term 'street or roadway' as used herein shall mean those portions of the Greensboro/High Point/Winston-Salem Regional Airport which have been improved and designed and are ordinarily used for ground motor vehicular traffic, except those portions so improved within the Air Operations Area as said area is defined and established from time to time by the Greensboro-High Point Airport Authority."

(2) By adding after Section 3.1 and before Section 4 a new section to read:

"Sec. 3.2. All of the provisions of Chapter 20 of the General Statutes of North Carolina relating to the use of streets, highways and public vehicular areas and the operation of motor vehicles thereon shall apply to the streets and roadways and parking lots and parking structures designed for ground transportation motor vehicles of the Greensboro/High Point/Winston-Salem Regional Airport. Any person violating any of the provisions of Chapter 20 as so applied shall, upon conviction thereof, be punished as prescribed by Chapter 20 for such violations. Nothing herein contained shall be construed as in any way interfering with the ownership or control of said streets and roadways and parking lots and parking structures by the Greensboro-High Point Airport Authority. The Board of Directors of Greensboro-High Point Airport Authority may also adopt rules and regulations relating to the use of the streets and roadways and parking lots and parking structures of the Airport not inconsistent with the provisions of Chapter 20, including rules and regulations fixing speed limits lower than those provided in Chapter 20."

(3) By rewriting Section 5 to read:

"Sec. 5. Violation of any rule or regulation adopted by the Board of Directors of the Greensboro-High Point Airport Authority relating to the use, operation and parking of motor vehicles on the streets and roadways and in parking lots and parking structures designed for ground transportation motor vehicles of the Greensboro/High Point/Winston-Salem Regional Airport shall be an infraction punishable by a penalty of not more than one hundred dollars (\$100.00). Violation of any other rule or regulation adopted by the Board of Directors of the Greensboro-High Point Airport Authority pursuant to this act shall be a misdemeanor punishable by a fine not to exceed one hundred dollars (\$100.00) or imprisonment for a period of time not to exceed 10 days, in the discretion of the court."

(4) By deleting from the first sentence of Section 5.1 the words "and be discharged from any criminal prosecution or penalties for such violation" and substituting in place thereof the following:

"and such payment shall constitute an admission of responsibility for the infraction and a waiver of the right to a hearing thereon; and such person shall not be required to appear at any judicial proceeding to answer said violation, and such person shall be exempt from any further penalty".

(5) By deleting the words "Greensboro-High Point Airport" wherever said words appear, and substituting in place thereof the words "Greensboro/High Point/Winston-Salem Regional Airport".

Sec. 2. If any one or more sections, clauses, sentences or parts of this act shall be adjudged invalid, such judgment shall not affect, impair or invalidate the remaining provisions thereof, but shall be confined in its operation to the specific provisions held invalid, and the inapplicability or invalidity of any section, clause, sentence or part of this act in one or more instances or circumstances shall not be taken to affect or prejudice in any way its applicability or validity in any other instance.

Sec. 3. Prosecutions for offenses occurring before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions.

Sec. 4. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 29th day of July, 1987.

H.B. 1223

CHAPTER 697

AN ACT TO PERMIT LARGE URBAN COUNTIES TO USE
PROPERTY TAX FUNDS FOR PERSONNEL COSTS RELATED
TO PLANNING AND ADMINISTRATION OF HOUSING
REHABILITATION PROGRAMS ALREADY AUTHORIZED BY
LAW.

The General Assembly of North Carolina enacts:

Section 1. The General Assembly finds that large urban areas have special needs for housing rehabilitation programs, because of the greater urban densities in and around urban areas.

Sec. 2. G.S. 153A-149(c) is amended by adding a new subdivision to read:

"(15a) Housing Rehabilitation. To provide for personnel costs related to planning and administration of housing rehabilitation programs authorized by G.S. 153A-376. This subdivision only applies to counties with a population of 400,000 or more, according to

the most recent decennial federal census."

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 29th day of July, 1987.

S.B. 222

CHAPTER 698

AN ACT TO MAKE TECHNICAL CORRECTIONS TO THE PROPERTY TAX STATUTES CONCERNING APPRAISAL AT USE VALUE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-277.2(1), (2), and (3) are amended as follows:

(1) by inserting between the words "appraised" and "as" in the second sentences of those subdivisions the words "under the use-value schedules"; and

(2) by deleting the words "minimum size requirement" in the third sentences of those subdivisions and substituting the word "requirements".

Sec. 2. G.S. 105-277.3(a)(1) is amended by rewriting the first sentence of that subdivision to read:

"Individually owned agricultural land consisting of one or more tracts, one of which consists of at least 10 acres that are in actual production and that, for the three years preceding January 1 of the year for which the benefit of this section is claimed, have produced an average gross income of at least one thousand dollars (\$1,000)."

Sec. 3. G.S. 105-277.3(a)(2) is amended by rewriting the first sentence of that subdivision to read:

"Individually owned horticultural land consisting of one or more tracts, one of which consists of at least five acres that are in actual production and that, for the three years preceding January 1 of the year for which the benefit of this section is claimed, have produced an average gross income of at least one thousand dollars (\$1,000)."

Sec. 4. G.S. 105-277.3(a)(3) is rewritten to read:

"(3) Individually owned forestland consisting of one or more tracts, one of which consists of at least 20 acres that are in actual production and are not included in a farm unit."

Sec. 5. G.S. 105-277.3(b) is amended in the last sentence of that subsection by deleting the words "the surviving spouse or children" and substituting the words "a relative of the decedent".

Sec. 6. The first sentence of G.S. 105-277.4(b) is amended by deleting "G.S. 105-277.6(c)" and substituting "G.S. 105-317".

Sec. 7. Chapter 667 of the 1985 Session Laws is amended by inserting a new section between Sections 6.1 and 7 to read:

"Sec. 6.2. If property loses its eligibility for use-value classification because of the amendments made by Section 2 of this act, no deferred taxes are due on the property and the lien for the deferred taxes that would otherwise be payable is extinguished."

Sec. 8. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 30th day of July, 1987.

S.B. 315

CHAPTER 699

AN ACT TO CLARIFY THE LAW REGARDING PAYMENT OF
COSTS IN DEPARTMENT OF HUMAN RESOURCES
INSTITUTIONS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143-118.1 is repealed.

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 30th day of July, 1987.

H.B. 979

CHAPTER 700

AN ACT TO CREATE A GENERAL OFFENSE OF TRESPASS
THAT REPLACES MISCELLANEOUS TRESPASS OFFENSES.

The General Assembly of North Carolina enacts:

Section 1. Chapter 14 of the General Statutes is amended by adding a new Article to read:

"Article 22B.

"§ 14-159.11. *Definition.*--As used in this Article, 'building' means any structure or part of a structure, other than a conveyance, enclosed so as to permit reasonable entry only through a door and roofed to protect it from the elements.

"§ 14-159.12. *First degree trespass.*--(a) Offense. A person commits the offense of first degree trespass if, without authorization, he enters or remains:

(1) On premises of another so enclosed or secured as to demonstrate clearly an intent to keep out intruders; or

(2) In a building of another.

(b) Classification. First degree trespass is a misdemeanor punishable by imprisonment for up to six months, a fine of up to one thousand dollars (\$1,000), or both.

"§ 14-159.13. *Second degree trespass.*--(a) Offense. A person commits the offense of second degree trespass if, without authorization, he enters or remains on premises of another:

- (1) After he has been notified not to enter or remain there by the owner, by a person in charge of the premises, by a lawful occupant, or by another authorized person; or
- (2) That are posted, in a manner reasonably likely to come to the attention of intruders, with notice not to enter the premises.

(b) Classification. Second degree trespass is a misdemeanor punishable by imprisonment for up to 30 days, a fine up to two hundred dollars (\$200.00), or both.

"§ 14-159.14. *Lesser included offenses.*--The offenses created by this act shall constitute lesser included offenses of breaking or entering as provided in G.S. 14-54 and G.S. 14-56."

Sec. 2. The following sections of Chapter 14 are repealed: G.S. 14-126, 14-132.1, 14-134, and G.S. 14-143.

Sec. 3. The title of Article 22 of Chapter 14 is rewritten to read:

"Damages and Other Offenses to Land and Fixtures."

Sec. 4. All laws that refer to statutes repealed or amended by this act shall be considered to refer, insofar as possible, to the provisions of this act that accomplish the same or an equivalent purpose.

Sec. 5. This act shall become effective October 1, 1987, and shall apply to offenses occurring on or after that date. Prosecutions for offenses occurring before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions.

In the General Assembly read three times and ratified this the 30th day of July, 1987.

H.B. 1004

CHAPTER 701

AN ACT TO REGULATE BEACH BINGO.

The General Assembly of North Carolina enacts:

Section 1. G.S. 14-309.14 reads as rewritten:

"§ 14-309.14. *Beach bingo.*--Nothing in this Article shall apply to 'beach bingo' games, except for the following subsections:

(a) No beach bingo game may be held in conjunction with any other lawful bingo game, with any 'promotional bingo game', or with any offering of an opportunity to obtain anything of value by chance, whether for valuable consideration or not. Any person who violates

this subsection is guilty of a Class H felony.

(b) G.S. 18B-308 shall apply to such beach bingo games."

Sec. 2. This act shall become effective January 1, 1988.

In the General Assembly read three times and ratified this the 30th day of July, 1987.

H.B. 1241

CHAPTER 702**AN ACT TO PREVENT THE DISCHARGE OF EMPLOYEES
BECAUSE THEY ARE CALLED FOR JURY DUTY.**

The General Assembly of North Carolina enacts:

Section 1. Chapter 9 of the General Statutes is amended by adding a new Article to read:

"Article 5.

"Discharge of Jurors Prohibited.

"§ 9-32. *Discharge of juror unlawful.*--(a) No employer may discharge or demote any employee because the employee has been called for jury duty, or is serving as a grand juror or petit juror.

(b) Any employer who violates any provision of this section shall be liable in a civil action for reasonable damages suffered by an employee as a result of the violation, and an employee discharged or demoted in violation of this section shall be entitled to be reinstated to his former position. The burden of proof shall be upon the employee.

(c) The statute of limitations for actions under this section shall be one year pursuant to G.S. 1-54."

Sec. 2. This act shall become effective October 1, 1987.

In the General Assembly read three times and ratified this the 30th day of July, 1987.

S.B. 1556

CHAPTER 703**AN ACT TO EXTEND THE EFFECT OF CERTAIN BUDGETARY
AND OTHER PROVISIONS DUE TO EXPIRE.**

The General Assembly of North Carolina enacts:

**-----DELAY CHANGE IN THE LAW REGARDING THE COST
ALLOCATION OF PLACEMENT OF EXCEPTIONAL CHILDREN**

Section 1. Section 2 of Chapter 465, Session Laws of 1985, as amended by Section 76 of Chapter 1014, Session Laws of 1985 and Section 3 of Chapter 524, Session Laws of 1987 is amended by deleting "August 1, 1987", and substituting "August 22, 1987, or upon ratification of the Current Operations Appropriations Act of

1987, whichever comes later".

-----EXTEND AUTHORITY FOR CHARLOTTE-MECKLENBURG PILOT TEACHER TENURE PROGRAM

Sec. 2. Section 6 of Chapter 394, Session Laws of 1983, as rewritten by Chapter 334, Session Laws of 1985, and as amended by Section 4 of Chapter 524, Session Laws of 1987, is amended by deleting "August 1, 1987" both places, and substituting "August 22, 1987, or ratification of the Current Operations Appropriations Act of 1987, whichever comes later".

-----EXTEND MECKLENBURG PILOT MEDIATION PROGRAM

Sec. 3. Section 162(a) of Chapter 761, Session Laws of 1983, as amended by Section 18 of Chapter 698, Session Laws of 1985 and Section 5 of Chapter 524, Session Laws of 1987 is amended by deleting "July 31, 1987", and substituting "August 23, 1987, or ratification of the Current Operations Appropriations Act of 1987, whichever comes later".

-----SCHOLARSHIP LOAN FUND FOR PROSPECTIVE TEACHERS

Sec. 4. Section 63(b) and Section 63(c) of Chapter 1014, Session Laws of 1985, as amended by Section 10 of Chapter 524, Session Laws of 1987, is amended by deleting "August 1, 1987" whenever those words appear, and substituting "August 22, 1987, or ratification of the Current Operations Appropriations Act of 1987, whichever comes later".

-----RETIRED APPELLATE JUDGE SERVICE EXTENDED

Sec. 5. Subsection 15(b) of Chapter 698 of the 1985 Session Laws, as amended by Section 3 of Chapter 851, Session Laws of 1985 and Section 225 of Chapter 1014 of the 1985 Session Laws, is further amended by deleting "July 30, 1987" and substituting "August 23, 1987, or upon ratification of the Current Operations Appropriations Act of 1987, whichever comes later".

Sec. 6. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 30th day of July, 1987.

S.B. 229

CHAPTER 704

AN ACT TO AMEND THE NORTH CAROLINA DRINKING WATER ACT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 130A-22(b) is amended by deleting the phrase "five thousand dollars (\$5,000)" and substituting the phrase "twenty-five thousand dollars (\$25,000)".

Sec. 2. G.S. 130A-313(10) is amended by adding a sentence after the end of the first sentence in the subsection to read:

"Two or more water systems that are adjacent and are owned or operated by the same supplier of water and that together serve 15 or more service connections or 25 or more persons is a public water system."

Sec. 3. G.S. 130A-321(a)(1)a. is amended by deleting the phrase "despite application of the best technology, treatment techniques or other means which the Secretary finds are generally" and substituting the phrase "after application of the best technology, treatment techniques, or other means which the Secretary finds are".

Sec. 4. G.S. 130A-321(a) is amended by adding a new subdivision to read:

"(5) In order to implement sub-subdivision a. of subdivision (1) of this subsection, the Commission shall adopt by rule a list of the best available technologies, treatment techniques, or other means available, to deal with each contaminant for which a maximum contaminant level is established."

Sec. 5. G.S. 130A-321(c) is rewritten to read:

"(c) As a condition of issuance of either a variance or an exemption, the Secretary shall issue a schedule of compliance for the public water system, including increments of progress for each drinking water rule for which the variance or exemption was issued. As a further condition of a variance or exemption, the Secretary shall require the public water system to implement any necessary control measures prescribed by the Secretary during the period of the variance or exemption. The compliance schedule for an exemption shall require compliance as expeditiously as practical but no later than June 19, 1987, for existing maximum contaminant levels and treatment techniques, or no later than one year from the issuance of the exemption for any newly adopted maximum contaminant level or treatment technique. The final date for compliance provided in any exemption schedule may be extended up to three years after the date of the issuance of the exemption if the water system establishes:

- (1) The water system cannot meet the standard without capital improvements which cannot be completed within the period of exemption, or
- (2) The system needs financial assistance for necessary improvements and has entered into an agreement to obtain such assistance, or
- (3) The system has entered into an enforceable agreement to become part of a regional public water system and the system is taking all practical steps to meet the standard.

If a public water system serves 500 or fewer service connections and needs financial assistance for necessary improvements, an exemption may be renewed for one or more additional two-year periods if the system establishes it meets the requirements set forth in subdivisions (1) and (2) of this section."

Sec. 6. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 31st day of July, 1987.

S.B. 630

CHAPTER 705

AN ACT TO ALLOW THE CITY OF HICKORY TO IMPOSE FACILITY FEES.

The General Assembly of North Carolina enacts:

Section 1. Purpose. It is the purpose of this act to place an equitable share of the cost of providing new community service facilities upon all new inhabitants and upon those associated with the development process.

Sec. 2. Definitions. The following definitions apply in this act unless the context clearly requires otherwise:

(1) "Capital costs" means costs spent for developing community service facilities; such costs are limited to capital outlay items listed in the "Uniform Local Government Accounting Systems" procedural manual prepared by the North Carolina Local Government Commission.

(2) "Community service facilities" means the following public facilities or improvements provided or established by the local government or in conjunction with other units of government: streets and sidewalks, water/sewer and drainage projects, and parks, open spaces, and recreational facilities. No other facility shall be considered as "Community service facilities" under the provisions of this act.

(3) "Developer" means an individual, corporation, partnership, organization, association, firm, political subdivision, or other legal entity constructing or creating new construction.

(4) "Facility fee" means the charge imposed upon new construction pursuant to the grant or authority herein contained.

(5) "New construction" means any new development, construction, or installation that requires any building or zoning permit, certification, or other action permitting real property improvements. The term includes the installation of a mobile home or factory built or modular housing. The term excludes the renovation and repair of existing structures and accessory uses and their

structures, unless such renovations and repairs and accessory uses shall cause an increase in the off-street parking requirement or a change in occupancy as occupancy is defined by the North Carolina State Building Code. The term also excludes additions unless such addition causes an increase in the off-street parking requirement or a change in occupancy as occupancy is defined by the North Carolina State Building Code. Further, the term does not include fences, billboards, poles, pipelines, transmission lines, advertising signs or similar structures and improvements that do not generate the need for additional or expanded community facilities upon completion of the additions or improvements.

Sec. 3. Subject to the conditions hereinafter set forth, a city that adopts an ordinance under Section 6 of this act shall have the right, power and authority to impose and collect a regulatory fee as a facility fee on all new construction within its city limits and extraterritorial jurisdiction.

Sec. 4. (a) No facility fee shall be imposed until the city has caused to be prepared a report containing:

- (1) A description of the anticipated capital cost to the city of each additional or expanded community service facility generated by new construction;
- (2) A description of the relevant characteristics of construction that give rise to additional or expanded community service facilities such as population, trip generation and storm water run-off and flow characteristics; and
- (3) A plan for providing one or more of the community service facilities.

(b) Before adopting or amending a facility fee ordinance authorized by this act, the city council shall hold a public hearing on it. A notice of the public hearing shall be given so as to conform with G.S. 160A-364. No facility fee ordinance shall be adopted or amended without first giving the planning commission a reasonable opportunity to make comments or recommendations to the city council.

(c) The amount of each facility fee imposed and collected shall be based upon reasonable and uniform considerations of capital costs to be incurred by the city as the result of new construction. In establishing the facilities fees to be imposed, the city council may divide the city and its extraterritorial area into two or more zones in order to determine the estimated costs of providing any or all of the facilities described herein; such division shall be done only after a public hearing and after the matter has been studied and reported on to the city council by the regional planning commission. The facilities

fees may be different in different zones, depending upon whether each zone already has certain facilities available and whether or not the capital costs thereof have been paid or are yet to be paid. The facility must bear a direct relationship to additional or expended public capital costs of community service facilities to be rendered for the inhabitants of the area occupants of the new construction, or those persons, firms or corporations responsible for developing any new development, whether commercial, industrial, residential or otherwise or any other developer.

(d) The amount of each facility fee shall be based upon qualified needs and specific classifications and rates, which shall be uniformly applied to all members. However, the classification shall be based upon the amount, the cost and the extent of the additional burden being placed upon the public facilities by particular types and sizes of development.

(e) Monies for each particular facility for which a facility fee is collected shall be placed in a separate trust fund. All such revenues shall be spent for the capital facilities for which they were collected and such benefits shall not be exclusive, that is, persons or developers who pay a facility fee hereunder shall not thereby obtain any rights to use public facilities greater than any other member of the public in a similar classification and situation. Separate service areas and zones with separate trust funds may be established.

Sec. 5. The city is authorized to enact ordinances, resolutions, rules and regulations that are necessary or expedient to carry this act into execution and effect.

Sec. 6. The powers conferred in this act shall be supplementary to all other powers and procedures authorized by any other general or local law. Assessments, charges, fees or rates authorized by any other general or local law are not affected by this act.

Sec. 7. The following shall be the procedure for hearing appeals concerning the amount of a facilities fee or concerning the propriety or illegality of any zone division or classification or rate. Any person who feels aggrieved by any action by the city council pursuant to this act must first pay the amount of the facilities fee so charged to him, with such amount clearly marked as paid under protest, and thereafter give notice of appeal within a period of 30 days after such payment. Such notice shall be delivered by personal service or registered or certified mail, return receipt requested, directed to the city manager. The city council shall hold a public hearing to review said matter within a period of 35 days following receipt of said appeal; the decision by the city council upon said

appeal shall then be subject to review by the Superior Court by proceedings in the nature of *certiorari*; any petition for review by the Superior Court shall be filed with the Clerk of Superior Court of Catawba County within a period of 30 days following the date the decision of the city council is delivered in writing to the appealing party, said delivery to be either by personal service or by registered mail or certified mail, return receipt requested.

Sec. 8. This act applies to the City of Hickory only.

Sec. 9. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 31st day of July, 1987.

S.B. 714

CHAPTER 706**AN ACT TO ABOLISH THE RULE IN SHELLEY'S CASE.**

The General Assembly of North Carolina enacts:

Section 1. Chapter 41 of the General Statutes is amended by adding a new section to read:

"§ 41-6.3. *Rule in Shelley's case abolished.*--The rule of property known as the rule in Shelley's case is abolished."

Sec. 2. This act shall become effective October 1, 1987, and applies to transfers of property that take effect on or after that date.

In the General Assembly read three times and ratified this the 31st day of July, 1987.

S.B. 825

CHAPTER 707**AN ACT TO PROVIDE RELIEF FROM THE WEIGHT LIMITATIONS FOR GARBAGE HAULERS.**

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-118(c) is amended by adding a new subdivision to read:

"(9) Fully enclosed motor vehicles designed specifically for collecting, compacting and hauling garbage from residences or from garbage dumpsters shall, when operating for those purposes, be exempt from the light traffic road limitation as provided by G.S. 20-118(b)(4). This exemption shall not apply to vehicles transporting hazardous waste as defined in G.S. 130A-290(4), spent nuclear fuel regulated under G.S. 20-167.1, low-level radioactive waste as defined in G.S. 104E-5(9a), or radioactive material as defined in G.S. 104E-

5(14)."

Sec. 2. G.S. 20-118(c) is amended by adding a new subdivision to read:

"(10) Fully enclosed motor vehicles designed specifically for collecting, compacting and hauling garbage from residences, or from garbage dumpsters shall, when operating for those purposes, be allowed a single axle weight not to exceed 23,500 pounds on the steering axle on vehicles equipped with a boom, or on the rear axle on vehicles loaded from the rear. This exemption shall not apply to vehicles transporting hazardous waste as defined in G.S. 130A-290(4), spent nuclear fuel regulated under G.S. 20-167.1, low-level radioactive waste as defined in G.S. 104E-5(9a), or radioactive material as defined in G.S. 104E-5(14)."

Sec. 3. G.S. 20-118(e)(2) reads as rewritten:

"(2) For each violation of the single-axle or tandem-axle weight limit as provided in G.S. 20-118(b)(1) and 20-118(b)(2) by vehicles transporting processed and unprocessed seafood from boats or any other point of origin to a processing plant or a point of further distribution, meats and agricultural crop products originating from a farm, or forest products originating from a farm or from woodlands to first market, or livestock or poultry by-products from point of origin to a rendering plant, or fully enclosed motor vehicles designed specifically for collecting, compacting and hauling garbage from residences, or from garbage dumpsters when operating for those purposes, the owner or registrant of the vehicle shall pay to the Department a civil penalty which equals the amount produced by applying one-half of the rate indicated in the schedule in G.S. 20-118(e)(1) to the weight in pounds on each axle in excess of the maximum weight in pounds allowed under G.S. 20-118(b)(1) and 20-118(b)(2)."

Sec. 4. G.S. 20-118(e)(4) reads as rewritten:

"(4) For each violation of any weight limit as provided in G.S. 20-118(b)(3) by vehicles transporting processed and unprocessed seafood from boats or any other point of origin to a processing plant or a point of further distribution, meats and agricultural crop products originating from a farm or forest products originating from a farm or woodlands to first market, or livestock or poultry by-products from point of origin to a rendering plant, or fully enclosed motor vehicles designed specifically for collecting, compacting and hauling garbage from residences, or from garbage dumpsters when operating for those purposes, the owner or registrant shall pay to the Department a civil penalty which equals the amount produced by applying one-half of the rate indicated in the schedule in G.S. 20-118(e)(3) to the weight in

pounds on each axle group in excess of the maximum weight in pounds allowed under G.S. 20-118(b)(3)."

Sec. 5. This act shall not apply to bridges posted pursuant to G.S. 136-72 and to Interstate Highways.

Sec. 6. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 31st day of July, 1987.

AN ACT REGULATING PEDDLERS, ITINERANT MERCHANTS,
FLEA MARKET VENDORS AND FLEA MARKET
OPERATORS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-53 is amended in the catch line by inserting immediately before the word "and" the words "flea market vendors".

Sec. 2. G.S. 105-53(b) is amended by deleting the third sentence of that subsection and substituting the following sentence:

"An itinerant merchant's license is not required to engage in the business of a flea market vendor at a location licensed as a flea market under subsection (c) of this section."

Sec. 3. G.S. 105-53(d) is rewritten to read as follows:

"(e) Exemptions. This section does not apply to the following:

- (1) A peddler, itinerant merchant, or flea market vendor:
 - a. who sells farm or nursery products produced by him;
 - b. who sells crafts or goods made by him or his own household personal property;
 - c. who is a nonprofit charitable, educational, religious, scientific, or civic organization;
 - d. who sells printed material, wood for fuel, ice, seafood, meat, poultry, livestock, eggs, dairy products, bread, cakes, or pies; or
 - e. who is an authorized automobile dealer licensed pursuant to Chapter 20 of the General Statutes.
- (2) A peddler who maintains a fixed permanent location from which he makes at least ninety percent (90%) of his sales, but who sells some goods in the county of his fixed location by peddling.
- (3) An itinerant merchant:
 - a. who locates at a farmer's market;
 - b. who is part of the State Fair or an agriculture fair which is licensed by the Commissioner of Agriculture pursuant to G.S. 106-520.3; or

c. who sells goods at an auction conducted by an auctioneer licensed pursuant to Chapter 85B of the General Statutes.

- (4) A peddler who complies with the requirements of G.S. 25A-38 through G.S. 25A-42, or who complies with the requirements of G.S. 14-401.13."

Sec. 4. G.S. 105-53 is amended by adding a new subsection (d) as follows:

"(d) Flea Market Vendor. Every person engaged in business as a flea market vendor shall obtain a license from the Secretary of Revenue for the privilege of engaging in such business and shall pay an annual tax of twenty-five dollars (\$25.00) for a statewide license. A 'flea market vendor' is a merchant, other than a merchant with an established retail store in the county, who transports an inventory of goods to a flea market licensed under subsection (c) of this section and who, at that location, displays the goods for sale and sells the goods at retail or offers the goods for sale at retail. A 'flea market' is a location, other than a permanent retail store or the enclosed area of a mall or shopping center, where space is rented to others for the purpose of selling goods at retail or offering goods for sale at retail."

Sec. 5. G.S. 105-53(g) is deleted and G.S. 105-53(e) is redesignated G.S. 105-53(g) and is amended by adding the words "County Exemption." immediately before the words "The board" the first time they appear and by adding the words "upon peddlers, itinerant merchants and flea market vendors" after the word "levied", and by substituting the word "sell" for the word "peddle".

Sec. 6. G.S. 105-53 is amended by adding the following new subsections:

"(h) Information to Department of Revenue. When a peddler, itinerant merchant, flea market vendor or flea market operator applies to the Department of Revenue for a license, he shall provide the name and permanent address of the peddler, itinerant merchant, flea market vendor or flea market operator. In providing this information, if the peddler, itinerant merchant, flea market vendor or flea market operator is not a corporation, he must provide a copy of a valid driver's license, a special identification card issued under G.S. 20-37.7, military identification or a passport bearing a physical description of the person named reasonably describing the peddler, itinerant merchant, flea market vendor or flea market operator. If the peddler, itinerant merchant, flea market vendor or flea market operator is incorporated, he shall give the name and the registered agent of the corporation and the address of the registered office of the

corporation, as filed with the North Carolina Secretary of State.

(i) Display and Possession of Licenses. An itinerant merchant or flea market vendor shall keep both the license required by this section and the retail sales tax license conspicuously and prominently displayed, so as to be visible for inspection by patrons of the itinerant merchant or flea market vendor, at the places or locations at which the goods are to be sold or offered for sale. A peddler shall have the license required by this section and the retail sales tax license with him at all times he offers goods for sale and must produce them upon the request of any person. A flea market operator shall have the license required by this section available for inspection during all times that the flea market is open and must produce it upon the request of any person.

(j) Permission of Property Owner. An itinerant merchant or a peddler who travels from place to place by vehicle, in addition to other requirements of this section, shall obtain a written statement signed by the owner or lessee of any property upon which the itinerant merchant or peddler offers goods for sale giving the owner's or lessee's permission to offer goods for sale upon the property of the owner or lessee. Such statement shall clearly state the name of the owner or lessee, the location of the premises for which the permission is granted, and the dates during which the permission is valid. Further, such statement shall be conspicuously and prominently displayed, so as to be visible for inspection by patrons of the itinerant merchant or peddler, at the places or locations at which the goods are to be sold or offered for sale.

(k) Flea Market Registration List. A flea market operator shall maintain a daily registration list of all flea market vendors selling or offering goods for sale at the flea market. This registration list shall clearly and legibly show the flea market vendor's name, permanent address and the flea market vendor's statewide flea market vendor's license number. If the flea market vendor is exempt from licensing under subsections (e) or (g), the list shall show the reason for exemption and be signed by the flea market vendor and the flea market operator. At the time of registration, the flea market operator must require the flea market vendor to exhibit a valid flea market vendor's license or county exemption certificate and retail sales tax license for visual inspection by the flea market operator. Each daily registration list maintained pursuant to this subsection shall be retained by the flea market operator for no less than two years and shall at any time be made available upon request to any law enforcement officer.

(l) **Penalty.** It shall be a misdemeanor, punishable by imprisonment of up to 30 days, a fine of up to two hundred dollars (\$200.00), or both, for a person to:

- (1) fail to obtain a license as required by this section;
- (2) knowingly give false information in the application process for a license or when registering pursuant to subsection (k);
- (3) if the person is an itinerant merchant or flea market vendor, fail to display the license as required by subsection (i) or if the person is a peddler or flea market operator, fail to produce the license as required by subsection (i) or if the person is required to do so, fail to comply with subsection (j). Whenever satisfactory evidence shall be presented in any court of the fact that a license was required by this section and such license was not displayed or produced as required by subsection (i), or that permission was required by subsection (j) of this section and was not displayed, the peddler, itinerant merchant, flea market vendor or flea market operator shall be found not guilty of that violation provided he produces in court a valid license or valid permission which had been issued prior to the time he was charged with such violation; or
- (4) if the person is a flea market operator, fail to comply with subsection (k) or knowingly allow a flea market vendor to falsely register as exempt under subsection (k).

(m) **Local License.** Counties and cities may levy a license tax on a business taxed under this section in an amount that does not exceed the State tax. Further, this section does not affect the authority of a county or city to impose additional requirements on peddlers, itinerant merchants, flea market vendors or flea market operators by an ordinance adopted under G.S. 153A-125 or G.S. 160A-178."

Sec. 7. G.S. 153A-125 is amended in the catch line by adding the words "flea markets" before the word "and", and is further amended in the first sentence by adding the following words after the word "peddlers,": "flea market operators and flea market vendors".

Sec. 8. G.S. 160A-178 is amended in the catch line by adding the words "flea markets" before the word "and", and is further amended in the first sentence by adding the following words after the word "peddlers,": "flea market operators and flea market vendors".

Sec. 9. G.S. 105-112 is amended by adding a new subsection (d) to read:

"(d) The provisions of this section notwithstanding, violations of G.S. 105-53 shall be punished as provided for in that section."

Sec. 10. All references to any part of G.S. 105-53 in this bill are as it is rewritten by Chapter 213, Session Laws of 1987.

Sec. 11. This act shall become effective July 1, 1988.

In the General Assembly read three times and ratified this the 31st day of July, 1987.

H.B. 166

CHAPTER 709

AN ACT TO PROVIDE MATCHING FUNDS TO REDUCE
RURAL FIRE INSURANCE RATES.

Whereas, rural volunteer fire departments often lack adequate funds to purchase equipment or facilities to house equipment; and

Whereas, fire fighting equipment is essential to rural fire departments if they are to provide fire protection services to the citizens in their response areas; and

Whereas, the acquisition of adequate equipment and buildings by rural volunteer fire departments will reduce the district fire rating and thus reduce the fire insurance rates; and

Whereas, volunteer fire department members must spend time raising money rather than training and providing services; Now, therefore,

The General Assembly of North Carolina enacts:

Section 1. Chapter 118 of the General Statutes is amended by adding at the end a new Article to read:

"Article 5.

"Rural Volunteer Fire Department and Rescue Squad Funds.

"§ 118-50. *Rural Volunteer Fire Department Fund.*--(a) There is created the Rural Volunteer Fire Department Fund to provide matching grants to rural volunteer fire departments to purchase equipment and make capital improvements. The Fund shall be set up in the Department of Insurance. The State Treasurer shall invest its assets according to law, and the earnings shall remain in the Fund. The Fund shall be distributed under the direction of the Commissioner of Insurance. Beginning January 1, 1988, an eligible fire department may apply to the Commissioner of Insurance for a grant under this section. Beginning May 1, 1988, and on each May 1, thereafter, the Commissioner shall make grants to eligible fire departments subject to the following limitations:

- (1) The size of a grant may not exceed twenty thousand dollars (\$20,000);

- (2) The applicant shall match the grant on a dollar-for-dollar basis;
- (3) The grant may be used only for equipment purchases or capital expenditures necessary to provide fire protection services; and
- (4) An applicant may receive no more than one grant per fiscal year.

In awarding grants under this section, the Commissioner shall to the extent possible select applicants from all parts of the State based upon need. No more than one percent (1%) of the Rural Volunteer Fire Department Fund may be used to administer the program in each fiscal year.

(b) A fire department is eligible for a grant under this section if:

- (1) It serves a response area of 6,000 or less in population;
- (2) It is all volunteer; and
- (3) It has been certified by the Department of Insurance.

In making the population determination under subdivision (1), The Department shall use the latest decennial U.S. Census population data.

(c) The Commissioner of Insurance shall submit a written report to the General Assembly within 60 days after the grants have been made. This report shall contain the amount of the grant and the name of the recipient."

Sec. 2. G.S. 105-228.5 is amended in the seventh paragraph as follows:

(1) By deleting the phrase "one percent (1%)" and substituting the phrase "one and thirty-three hundredths percent (1.33%)" and

(2) By adding at the end a new sentence to read: "Twenty-five percent (25%) of the net proceeds of the one and thirty-three hundredths percent (1.33%) tax on amounts collected on contracts of insurance applicable to fire and lightning coverage shall be deposited in the Rural Volunteer Fire Department Fund established in Chapter 118 of the General Statutes."

Sec. 3. This act is effective for taxable years beginning on and after January 1, 1987.

In the General Assembly read three times and ratified this the 31st day of July, 1987.

H.B. 831

CHAPTER 710

AN ACT TO INCREASE THE FEES SET AND COLLECTED BY
THE STATE BOARD OF MORTUARY SCIENCE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 90-210.28 is rewritten to read:

" § 90-210.28. *Fees.*--(a) The Board may set and collect fees, not to exceed the following amounts:

| | |
|---|----------|
| Establishment permit | |
| Application | \$200.00 |
| Annual renewal | 100.00 |
| Late renewal penalty | 75.00 |
| Courtesy card | |
| Application | 75.00 |
| Annual renewal | 50.00 |
| Out-of-state licensee | |
| Application | 150.00 |
| Embalmer, funeral director, funeral service | |
| Application--North Carolina-Resident | 100.00 |
| --Non-Resident | 200.00 |
| Annual Renewal-embalmer or funeral director | 50.00 |
| --funeral service | 100.00 |
| Reinstatement fee | 50.00 |
| Resident trainee permit | |
| Application | 50.00 |
| Annual renewal | 35.00 |
| Late renewal penalty | 25.00 |
| Duplicate license certificate | 25.00 |
| Chapel registration | |
| Application | 150.00 |
| Annual renewal | 100.00 |

The Board shall provide, without charge, one copy of the current statutes and regulations relating to Mortuary Science to every person applying for and paying the appropriate fees for licensing pursuant to this Article. The Board may charge all others requesting copies of the current statutes and regulations, and the licensees or applicants requesting additional copies, a fee equal to the costs of production and distribution of the requested documents."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 31st day of July, 1987.

H.B. 895

CHAPTER 711

AN ACT TO PROVIDE FOR THE REMOVAL FROM A COUNTY FIRE SERVICE DISTRICT OF ANY AREA ANNEXED BY A MUNICIPALITY, AND PROVIDING FOR PRORATION OF TAXATION, IN A MANNER SIMILAR TO THAT PROVIDED FOR FIRE PROTECTION DISTRICTS ORGANIZED UNDER CHAPTER 69 OF THE GENERAL STATUTES, AND TO ALLOW ANNEXATION TO A RURAL FIRE PROTECTION DISTRICT OF AREAS WITHIN THE CORPORATE LIMITS OF A MUNICIPALITY.

The General Assembly of North Carolina enacts:

Section 1. Article 16 of Chapter 153A of the General Statutes is amended by adding a new section to read:

" § 153A-304.1. *Reduction in district after annexation.*--(a) When the whole or any portion of a county service district organized for fire protection purposes under G.S. 153A-301(2) has been annexed by a municipality furnishing fire protection to its citizens, and the municipality had not agreed to allow territory within it to be within the county service district under G.S. 153A-302(a), then such county service district or the portion thereof so annexed shall immediately thereupon cease to be a county service district or a portion of a county service district; and such district or portion thereof so annexed shall no longer be subject to G.S. 153A-307 authorizing the board of county commissioners to levy and collect a tax in such district for the purpose of furnishing fire protection therein.

(b) Nothing in this section prevents the board of county commissioners from levying and collecting taxes for fire protection in the remaining portion of a county service district not annexed by a municipality.

(c) When all or part of a county service district is annexed, and the effective date of the annexation is a date other than a date in the month of June, the amount of the county service district tax levied on property in the district for the fiscal year in which municipal taxes are prorated under G.S. 160A-58.10 shall be multiplied by the following fraction: the denominator shall be 12 and the numerator shall be the number of full calendar months remaining in the fiscal year following the day on which the annexation becomes effective. For each owner, the product of the multiplication is the prorated fire protection payment. The finance officer of the city shall obtain from the tax supervisor or tax collector of the county where the annexed territory was located a list of the owners of property on which fire protection

district taxes were levied in the territory being annexed, and the city shall, no later than 90 days after the effective date of the annexation, pay the amount of the prorated fire protection district payment to the owners of that property. Such payments shall come from any funds not otherwise restricted by law.

(d) Whenever a city is required to make fire protection district tax payments by subsection (c) of this section, and the city has paid or has contracted to pay to a rural fire department funds under G.S. 160A-37.1 or G.S. 160A-49.1, the county shall pay to the city from funds of the county service district an amount equal to the amount paid by the city (or to be paid by the city) to a rural fire department under G.S. 160A-37.1 or G.S. 160A-49.1 on account of annexation of territory in the county service district for the number of months in that fiscal year used in calculating the numerator under subsection (c) of this section; provided that the required payments by the county to the city shall not exceed the total of fire protection district payments made to taxpayers in the district on account of that annexation."

Sec. 2. G.S. 69-25.11 is amended by adding a new subdivision to read:

"(5) The area of any fire protection district may be increased by including within the boundaries of the district any adjoining territory lying within the corporate limits of the city if the territory is not already included within a fire protection district, provided both the city governing body and the county commissioners of the county or counties in which the fire protection district is located all agree by resolution to such inclusion."

Sec. 3. Section 1 of this act shall become effective with respect to annexations effective on or after August 1, 1987. Section 2 of this act is effective upon ratification.

In the General Assembly read three times and ratified this the 31st day of July, 1987.

H.B. 910

CHAPTER 712

AN ACT TO EXEMPT PRIVATE LANDS EXCLUSIVELY USED
FOR STORM DRAINAGE PURPOSES FROM SPECIAL
ASSESSMENTS IN BRUNSWICK COUNTY.

The General Assembly of North Carolina enacts:

Section 1. G.S. 153A-188 reads as rewritten:

" § 153A-188. *Lands exempt from assessment.*-- Except as provided in this Article, no land within a county is exempt from special assessments except:

(1) land belonging to the United States that is exempt under the provisions of federal statutes ~~and;~~

(2) in the case of water or sewer projects, land within any floodway delineated by a local government pursuant to Chapter 143, Article 21, Part 6. ~~In addition;~~

(3) in the case of water or sewer projects, land owned, leased, or controlled by a railroad company; or

(4) where required by local ordinances, private lands exclusively used for storm drainage purposes or for docks, ramps, subdivision parks, and greenways is exempt from assessments by a county to the same extent that it would be exempt from assessments by a city under G.S. 160A-222."

Sec. 2. This act applies to Brunswick County only.

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 31st day of July, 1987.

H.B. 1008

CHAPTER 713

AN ACT TO BRING NORTH CAROLINA INTO COMPLIANCE WITH A COURT DECISION CONCERNING STRAIGHT-TICKET VOTING, AND TO PROVIDE A SEPARATE BALLOT FOR MULTI-SEAT RACES, EXCEPT WHERE MECHANICAL VOTING MACHINES ARE USED.

The General Assembly of North Carolina enacts:

Section 1. G.S. 163-140 is amended by adding a new subsection to read:

"(f) Multi-seat races. The General Assembly finds that since the federal court opinion voiding the law which provided that a straight-ticket ballot shall take precedence in counting over a ballot marked for individual candidates, confusion has occurred in the counting of ballots in multi-seat races. In order to minimize the confusion of instructions for marking ballots in multi-seat races, which must be different than those in single-seat races, the General Assembly finds it necessary that these ballots be printed separately, except in the case of mechanical voting machines. On such machines, where it is physically impossible to vote both a straight-ticket and for an individual candidate, without pulling up the lever of an individual candidate, clearly showing the voter's intention, it is unnecessary to

have a separate ballot for multi-seat races, and having such a separate ballot would result in more columns and rows on the machine than the mechanical machine can handle.

Multi-seat races in partisan general elections, which except as provided in this section would have appeared on the State ballot or county ballot, and except for multi-seat races on mechanical voting machines, shall be placed on a separate multi-seat ballot or ballots, which shall not be combined with any ballot other than a multi-seat ballot. Beneath the title and general instructions set out in this subsection, the ballot(s) for multi-seat races shall be divided into parallel columns separated by distinct black lines. The State Board of Elections shall assign a separate column to each political party having candidates in multi-seat races and one to unaffiliated candidates, if any. At the head of each party column the party's name shall be printed in large type, and at the head of the column for unaffiliated candidates shall be printed in large type the words 'Unaffiliated Candidates.' Below the party name in each column shall be printed a circle, one-half inch in diameter, and around which shall be plainly printed the following instruction: 'For a straight ticket, mark within this circle.' With distinct black lines, the State Board of Elections shall divide the columns into horizontal sections and, in the customary order of office, assign a separate section to each group of offices to be filled. On a single line at the top of each section shall be printed a direction as to the number of candidates for whom a vote may be cast. If candidates are to be chosen for different terms to the same office, the term in each instance shall be printed as part of the title of the office.

The name or names of each political party's candidate or candidates for each office listed on the ballot shall be printed in the appropriate office section of the proper party column and the names of unaffiliated candidates shall be printed in the appropriate office section of the column headed 'Unaffiliated Candidates.' At the left of each name shall be printed a voting square, and in each column all voting squares shall be arranged in a perpendicular line.

On the face of the ballot, above the party and unaffiliated column division, the following instructions shall be printed in heavy red type to contrast with the type of the rest of the ballot:

- a. To vote for all candidates of one party (a straight ticket), make a cross (X) mark in the circle of the party of your choice.
- b. You may vote a split ticket in one of two ways:

- (1) by making a cross mark opposite the name of each candidate for whom you wish to vote and making no mark in the party circle, or
 - (2) by marking the party circle and then making a cross mark opposite the name of each candidate you choose in the race(s) where you wish to vote a split ticket.
- c. If you tear or deface or wrongly mark this ballot, return it and get another.'

Ballot instructions need not be printed in red type except on the separate ballot(s) for multi-seat races."

Sec. 1.1. G.S. 163-151(5) reads as rewritten:

"(5) Split Ticket. In an election but not in a primary, if the voter desires to vote for candidates of more than one political party (a split ticket), he shall do so in either of the following ways:

- a. Omit marking in the party circle of any party and mark in the voting square opposite the name of each candidate of any party printed on the ballot for whom the voter wishes to vote.
- b. ~~If the voter should mark the party circle of one party, and also mark the voting square opposite the name of candidates of any other party, the ballot shall be counted as a straight ticket for all candidates of the party whose circle was marked and the individually marked candidates of any other party shall not be counted.~~ Mark the party circle of one party and also mark the voting square opposite the name of any candidate or candidates of any other party. The ballot shall be counted as a straight ticket for all candidates of the party whose circle was marked except for a candidate for an office for which the voter has marked the candidate of any other party, in which case the vote marked for any candidate or candidates of any other party shall be counted instead for that office.

Sec. 2. G.S. 163-151(6)d. reads as rewritten:

"d. If the voter has marked the party circle of one party, he ~~should not~~ may, except as prohibited by G.S. 163-123(f), write in the name of a person under the name of a candidate in any other party. In such case, the write-in shall ~~not~~ and otherwise be counted, ~~but~~ the ballot shall be counted for all candidates of the party whose circle was marked except for the office for which there is a write-in."

Sec. 3. G.S. 163-170(5)d.2. reads as rewritten:

"2. If the voter has marked the party circle at the top of the column of a political party, and has made a write-in under the name of a candidate printed in a column of a different political party, except as

prohibited by G.S. 163-123(f), the write-in shall not be counted, and otherwise the ballot shall be counted as a vote for all candidates of the party in whose circle he has marked except for the office for which there is a write-in."

Sec. 4. G.S. 163-170(6)a. reads as rewritten:

"a. If the voter has marked the party circle of one party and also marked the voting square of individual candidates of another party, the ballot shall be counted as a straight ballot ~~and counted as a vote for every candidate for the party whose circle has been marked~~ ticket for all candidates of the party whose circle was marked except for a candidate for an office for which the voter has marked the candidate of any other party, in which case the vote marked for any candidate or candidates of any other party shall be counted instead for that office."

Sec. 5. G.S. 163-151 is amended by adding the following new subdivision:

"(7) Multi-seat races. If the voter should mark the party circle of one party and also mark the voting square opposite the name of candidates of any other party in a multi-seat race, only those candidates of any party beside whose name the voting square is marked shall receive a vote."

Sec. 6. G.S. 163-170(5)d. is amended by adding the following new subparagraph:

"3. In a multi-seat race, if the voter has marked the party circle at the top of the column of a political party and has made a write-in under the name of a candidate printed in a column of a different political party, only the write-in and those other candidates of any party beside whose name the voting square is marked shall receive a vote. This subparagraph does not apply if the write-in cannot be counted because of G.S. 163-123(f)."

Sec. 7. G.S. 163-170(6) is amended by adding the following new subparagraph:

"c. In a multi-seat race, if the voter has marked the party circle at the top of the column of a political party and has marked the voting square of a candidate of any other party, only those candidates of any party beside whose names the voting squares are marked shall receive a vote."

Sec. 8. G.S. 163-140(b)(2) reads as rewritten:

"(2) Ballot for United States Senator: Beneath the title and general instructions set out in this subsection, the ballot for United States Senator shall be divided into parallel columns separated by distinct black lines. The State Board of Elections shall assign a separate column to each political party having a candidate for the office and

one to unaffiliated candidates, if any. At the head of each party column the party's name shall be printed in large type, and at the head of the column for unaffiliated candidates shall be printed in large type the words 'Unaffiliated Candidates.' The name of each political party's candidate for United States Senator shall be printed in the appropriate party column, and the names of unaffiliated candidates for the office shall be printed in the column headed 'Unaffiliated Candidates.' At the left of each name shall be printed a voting square, and in each column all voting squares shall be arranged in a perpendicular line. On the face of the ballot, above the party and unaffiliated column division, the following instructions shall be printed in heavy black type:

- 'a. Vote for only one candidate.
- b. If you tear or deface or wrongly mark this ballot, return it and get another.'

On the bottom of the ballot shall be printed an identified facsimile of the signature of the Chairman of the State Board of Elections.

When the ballot for United States Senator is combined with a ballot for another office, below the party name in each column shall be printed a circle, one-half inch in diameter, around which shall be plainly printed the following instruction: 'For a straight ticket, mark within this circle.' The following instructions, in lieu of those specified in the preceding paragraph, shall be printed in heavy black type on the face of the combined ballot to the top above the party and unaffiliated column division:

- 'a. To vote for all candidates of one party (a straight ticket), make a cross (X) mark in the circle of the party for whose candidates you wish to vote.
- b. ~~To vote for candidates of more than one party (a split ticket), do not mark in any party circle, but make a cross (X) mark in the square opposite the name of each candidate for whom you wish to vote. You may vote a split ticket by marking a cross (X) mark in the party circle and then making a cross (X) mark in the square opposite the name of the candidate(s) of a different party for whom you wish to vote.~~
- c. You may also vote a split ticket by not marking a cross (X) mark in the party circle, but by making a cross (X) mark in the square opposite the name of each candidate for whom you wish to vote.
- € d. If you tear or deface or wrongly mark this ballot, return it and get another.'"

Sec. 9. G.S. 163-140(b)(3) reads as rewritten:

"(3) Ballot for Member of the United States House of Representatives: Beneath the title and general instructions set out in this subsection, the congressional district ballot for member of the United States House of Representatives shall be divided into parallel columns separated by distinct black lines. The State Board of Elections shall assign a separate column to each political party having a candidate for the office and one to unaffiliated candidates, if any. At the head of each party column the party's name shall be printed in large type, and at the head of the column for unaffiliated candidates shall be printed in large type the words 'Unaffiliated Candidates.' The name of each political party's candidate for member of the United States House of Representatives from the congressional district shall be printed in the appropriate party column, and the names of unaffiliated candidates for the office shall be printed in the column headed 'Unaffiliated Candidates.' At the left of each name shall be printed a voting square, and in each column all voting squares shall be arranged in a perpendicular line. On the face of the ballot, above the party and unaffiliated column division, the following instructions shall be printed in heavy black type:

- 'a. Vote for only one candidate.
- b. If you tear or deface or wrongly mark this ballot, return it and get another.'

On the bottom of the ballot shall be printed an identified facsimile of the signature of the Chairman of the State Board of Elections.

When the ballot for member of the United States House of Representatives is combined with a ballot for another office, below the party name in each column shall be printed a circle, one-half inch in diameter, around which shall be plainly printed the following instruction: 'For a straight ticket, mark within this circle.' The following instructions, in lieu of those specified in the preceding paragraph, shall be printed in heavy black type on the face of the combined ballot at the top above the party and unaffiliated column division:

- 'a. To vote for all candidates of one party (a straight ticket), make a cross (X) mark in the circle of the party for whose candidates you wish to vote.
- b. ~~To vote for candidates of more than one party (a split ticket), do not mark in any party circle, but make a cross (X) mark in the square opposite the name of each candidate for whom you wish to vote. You may vote a split ticket by marking a cross (X) mark in the party circle and then making a cross (X) mark in the square opposite the name of the candidate(s) of a different party for whom you wish~~

to vote.

- c. You may also vote a split ticket by not marking a cross (X) mark in the party circle, but by making a cross (X) mark in the square opposite the name of each candidate for whom you wish to vote.

- € d. If you tear or deface or wrongly mark this ballot, return it and get another.'"

Sec. 10. G.S. 163-140(b)(4) reads as rewritten:

"(4) State Ballot: Beneath the title and general instructions set out in this subsection, the ballot for single-seat contests for State officers, and for all State officers where mechanical voting machines are used (including judges of the superior court) shall be divided into parallel columns separated by distinct black lines. The State Board of Elections shall assign a separate column to each political party having candidates for State offices and one to unaffiliated candidates, if any. At the head of each party column the party's name shall be printed in large type, and at the head of the column for unaffiliated candidates shall be printed in large type the words 'Unaffiliated Candidates.' Below the party name in each column shall be printed a circle, one-half inch in diameter, around which shall be plainly printed the following instruction: 'For a straight ticket, mark within this circle.' With distinct black lines, the State Board of Elections shall divide the columns into horizontal sections and, in the customary order of office, assign a separate section to each office or group of offices to be filled. On a single line at the top of each section shall be printed a direction as to the number of candidates for whom a vote may be cast. If candidates are to be chosen for different terms to the same office, the term in each instance shall be printed as part of the title of the office.

The name or names of each political party's candidate or candidates for each office listed on the ballot shall be printed in the appropriate office section of the proper party column, and the names of unaffiliated candidates shall be printed in the appropriate office section of the column headed 'Unaffiliated Candidates.' At the left of each name shall be printed a voting square, and in each column all voting squares shall be arranged in a perpendicular line.

On the face of the ballot, above the party and unaffiliated column division, the following instructions shall be printed in heavy black type:

- 'a. To vote for all candidates of one party (a straight ticket), make a cross (X) mark in the circle of the party for whose candidates you wish to vote.
- ~~b. To vote for candidates of more than one party (a split ticket), do not mark in any party circle, but make a cross (X) mark in the square opposite the name of each candidate for whom you wish to vote.~~
- ~~c. If you should insert a cross (X) mark in one of the party circles at the top of the ballot and also mark in the voting square opposite the name of any candidate of any party, your ballot will be counted as a straight ticket vote for all of the candidates of the party whose circle you marked.~~
- b. You may vote a split ticket by marking a cross (X) mark in the party circle and then making a cross (X) mark in the square opposite the name of the candidate(s) of a different party for whom you wish to vote. In any multi-seat race where a party circle is marked and you vote for candidates of another party, in order for your vote to count for any candidates for that office of the party for which you marked the party circle you must make a cross (X) mark opposite the name of those candidate(s).
- c. You may also vote a split ticket by not marking a cross (X) mark in the party circle, but by making a cross (X) mark in the square opposite the name of each candidate for whom you wish to vote.
- d. If you tear or deface or wrongly mark this ballot, return it and get another.'

On the bottom of the ballot shall be printed an identified facsimile of the signature of the Chairman of the State Board of Elections. If the State ballot contains no multi-seat race, then the second sentence of instruction b. shall not appear on the ballot."

Sec. 11. G.S. 163-140(b)(5) as amended by Chapter 491, Session Laws of 1987 reads as rewritten:

"(5) County Ballot: Beneath the title and general instructions set out in this subsection, the ballot for single-seat contests for county officers (including district attorney for the prosecutorial district in which the county is situated, district judge for the district court district in which the county is situated, and members of the General Assembly in the senatorial and representative districts in which the county is situated), and for all county offices where mechanical voting machines are used, shall be divided into parallel columns separated by distinct black lines. The county board of elections shall assign a separate column to each

political party having candidates for the offices on the ballot and one to unaffiliated candidates, if any. At the head of each party column the party's name shall be printed in large type and at the head of the column for unaffiliated candidates shall be printed in large type the words 'Unaffiliated Candidates.' Below the party name in each column shall be printed a circle, one-half inch in diameter, around which shall be plainly printed the following instruction: 'For a straight ticket, mark within this circle.' With distinct black lines, the county board of elections shall divide the columns into horizontal sections and, in the customary order of office, assign a separate section to each office or group of offices to be filled. On a single line at the top of each section shall be printed the title of the office, and directly below the title shall be printed a direction as to the number of candidates for whom a vote may be cast. If candidates are to be chosen for different terms to the same office, the term in each instance shall be printed as part of the title of the office.

The name or names of each political party's candidate or candidates for each office listed on the ballot shall be printed in the appropriate office section of the proper party column, and the names of unaffiliated candidates shall be printed in the appropriate office section of the column headed 'Unaffiliated Candidates.' At the left of each name shall be printed a voting square, and in each column all voting squares shall be arranged in a perpendicular line.

On the face of the ballot, above the party and unaffiliated column division, the following instructions shall be printed in heavy black type:

- 'a. To vote for all candidates of one party (a straight ticket), make a cross (X) mark in the circle of the party for whose candidates you wish to vote.
- ~~b. To vote for candidates of more than one party (a split ticket), do not mark in any party circle, but make a cross (X) mark in the square opposite the name of each candidate for whom you wish to vote.~~
- ~~c. If you should insert a cross (X) mark in one of the party circles at the top of the ballot and also mark in the voting square opposite the name of any candidate of any party, your ballot will be counted as a straight ticket vote for all of the candidates of the party whose circle you marked.~~
- b. You may vote a split ticket by marking a cross (X) mark in the party circle and then making a cross (X) mark in the square opposite the name of the candidate(s) of a different party for whom you wish to vote. In any multi-seat race

where a party circle is marked and you vote for candidates of another party, in order for your vote to count for any candidates for that office of the party for which you marked the party circle you must make a cross (X) mark opposite the name of those candidate(s).

- c. You may also vote a split ticket by not marking a cross (X) mark in the party circle, but by making a cross (X) mark in the square opposite the name of each candidate for whom you wish to vote.
- d. If you tear or deface or wrongly mark this ballot, return it and get another.

On the bottom of the ballot shall be printed an identified facsimile of the signature of the chairman of the county board of elections. If the county ballot contains no multi-seat race, then the second sentence of instruction b. shall not appear on the ballot."

Sec. 12. G.S. 163-140(a) reads as rewritten:

"(a) Kinds of General Election Ballots; Right to Combine. -- For purposes of general elections, there shall be seven kinds of official ballots entitled:

- (1) Ballot for presidential electors
- (2) Ballot for United States Senator
- (3) Ballot for member of the United States House of Representatives
- (4) State ballot
- (5) County ballot
- (7) Ballot for constitutional amendments and other propositions submitted to the people.

Use of official ballots shall be limited to the purposes indicated by their titles. The printing on all ballots shall be plain and legible but, unless large type is specified by this section, type larger than 10-point shall not be used in printing ballots. All general election ballots shall be prepared in such a way as to leave sufficient blank space beneath each name printed thereon in which a voter may conveniently write the name of any person for whom he may desire to vote.

Unless prohibited by this section, the board of elections, State or county, charged by law with printing ballots may, in its discretion, combine any two or more official ballots. Whenever two or more ballots are combined, the voting instructions for the State ballot set out in subsection (b)(4) of this section shall be used, except that if the two ballots being combined do not contain a multi-seat race, then the second sentence of instruction b. shall not appear on the ballot."

Sec. 12.1. Notwithstanding any other provision of this act, in the case of a multi-seat race, if a voter votes a straight-party ticket, and also votes for individual candidates of that party but not for individual candidates of another party, the ballot shall be counted for all the candidates for that multi-seat race of the party whose straight-ticket has been marked. The State Board of Elections shall by regulation amend the instructions provided by this act to effectuate this section.

Sec. 12.2. The provisions of this act are severable, and if any provision of this act is held invalid by a court of competent jurisdiction, or is unenforceable under Section 5 of the Voting Rights Act of 1965, the invalidity or unenforceability shall not affect other provisions of this act which can be given effect without the invalid or unenforceable provision.

Sec. 13. Chapter 1099, Session Laws of 1983 is repealed.

Sec. 14. This act shall become effective with respect to elections held on or after January 1, 1988.

In the General Assembly read three times and ratified this the 31st day of July, 1987.

S.B. 323

CHAPTER 714

AN ACT TO CHANGE THE EFFECTIVE DATE OF THE LIFE
CARE CENTER CERTIFICATE OF NEED MODIFICATION
LAW.

The General Assembly of North Carolina enacts:

Section 1. Certificates of need received by "Life Care" or "Care for Life" institutions pursuant to Chapter 920 of the 1983 Session Laws shall expire on December 31, 1993.

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 3rd day of August, 1987.

S.B. 416

CHAPTER 715

AN ACT TO PROVIDE FOR CONTINUING PARTICIPATION IN
THE 1990 REDISTRICTING DATA PROGRAM OF THE U.S.
BUREAU OF THE CENSUS.

The General Assembly of North Carolina enacts:

TITLE I. FREEZE IN TOWNSHIP BOUNDARIES

Section 1. G.S. 153A-19 reads as rewritten:

" § 153A-19. Establishing and naming townships.--(a) A county may by resolution establish and abolish townships, change their boundaries, and prescribe their names, except that no such resolution may become effective during the period beginning January 1, 1988, and ending January 2, 1990, and any resolution providing that the boundaries of a township shall change automatically with changes in the boundaries of a city shall not be effective during that period. The current boundaries of each township within a county shall at all times be drawn on a map, or set out in a written description, or shown by a combination of these techniques. This current delineation shall be available for public inspection in the office of the clerk.

(b) Any provision of a city charter or other local act which provides that the boundaries of a township shall change automatically upon a change in a city boundary shall not be effective during the period beginning January 1, 1988, and ending January 2, 1990."

TITLE II. REDUCTION OF ANNEXATIONS DURING MAP PREP

Sec. 2. (a) In the case of any annexation ordinance adopted during the period beginning January 1, 1987, and ending on the date of ratification of this act, if the effective date of the annexation under the ordinance is during 1988, the governing board of the municipality may, notwithstanding G.S. 160A-37(j) or G.S. 160A-49(j), amend the ordinance to provide for an effective date of December 31, 1987. The board must give notice by publication of its intent to consider adoption of such ordinance, such notice to be published at least 10 days before the meeting at which the ordinance is adopted. Copies of the adopted ordinance shall be recorded in accordance with the provisions of G.S. 160A-39 or G.S. 160A-51, as applicable.

(b) This section applies only to territory located in counties with a population of 55,000 or over, according to the 1980 decennial federal census.

Sec. 3. (a) No annexation ordinance adopted under Article 4A of Chapter 160A of the General Statutes may become effective during the period beginning November 1, 1989, and ending January 1, 1990. If because of the operation of G.S. 160A-37.1(h), G.S. 160A-37.3(g), G.S. 160A-38, G.S. 160A-49.1(h), G.S. 160A-49.3(g), G.S. 160A-50, the order of any court, or the operation of Section 5 of the Voting Rights Act of 1965, an annexation ordinance is to become effective during the period beginning November 1, 1989, and ending January 1, 1990, it shall instead become effective on a date during the period beginning January 2, 1990, and ending December 31, 1990,

set by ordinance of the governing board of the city.

(b) If the final date upon which an annexation ordinance adopted under Article 4A of Chapter 160A of the General Statutes, may be made effective occurs during the period beginning November 1, 1989, and ending January 1, 1990, the effective date of the annexation may be set in the annexation ordinance as any date during the period beginning January 2, 1990, and ending December 31, 1990, in addition to any date permitted by law before November 1, 1989.

(c) This section applies only to territory located in counties with a population of 55,000 or over, according to the 1980 decennial federal census.

TITLE III. COMPLIANCE WITH 1990 REDISTRICTING DATA PROGRAM

Sec. 4. Article 12A of Chapter 163 of the General Statutes is amended by adding new sections to read:

" § 163-132.5A. *Precinct boundaries.*--(a) Whenever an annexation ordinance adopted under Parts 1, 2, or 3 of Article 4A of Chapter 160A of the General Statutes, or a local act of the General Assembly annexing property to a municipality, becomes effective during the period beginning January 1, 1988, and ending December 31, 1989, and any part of the boundary of the area being annexed which is actually contiguous to the city is also a precinct boundary for elections administered by the county board of elections then the annexed area is automatically moved into the 'city precinct', provided that if the annexed area is adjacent to more than one city precinct, the board of elections shall place the area in any one or more of the adjacent city precincts. The county board of elections may delay the effective date of any change under this subsection to a date not later than January 1, 1992.

(b) This section does not apply when the entire area of contiguity between the city and the area being annexed is a township boundary, a county boundary, or a visible feature used or expected to be used as a census block boundary in the 1990 census.

" § 163-132.5B. *Exemption from Administrative Procedure Act.*--The State Board of Elections is exempt from the provisions of Articles 2, 3, 3A and 4 of Chapter 150B of the General Statutes while acting under the authority of this Article. Appeals from a final decision of the State Board of Elections under this Article shall be taken directly to the Superior Court of Wake County.

" § 163-132.5C. *Local acts.*--(a) Notwithstanding the provisions of any local act, a county board of elections need not have the approval of any other county board or commission to make precinct boundary changes required by this Article.

(b) Notwithstanding G.S. 163-128, precinct boundaries established or changed under this Article need not follow township lines."

Sec. 5. G.S. 163-132.2 reads as rewritten:

"§ 163-132.2. *Establishment of precinct boundaries for 1990 Census.*—(a) The Legislative Services Office as soon as it receives the U.S. Census Bureau's official census block maps to be used in the 1990 U.S. Census shall send the relevant copies of those maps to county boards of elections. After receiving copies of those maps, the county boards of election shall:

- (1) Alter, where necessary, precinct boundaries to be coterminous with township boundaries, municipal boundaries, census block boundaries, or a combination of those boundaries provided that if, as a result of the alteration, the polling place is no longer in the precinct, it may continue to be the polling place as long as the lot or tract on which the polling place is situated adjoins the precinct;
- (1a) Alter, where necessary, precinct boundaries so that each precinct is composed solely of contiguous territory, except where the operation of G.S. 163-132.5A has caused a precinct to be divided into two or more non-contiguous areas.
- (2) Mark all precinct boundaries on the maps sent by the Legislative Services Office, showing the precinct boundaries in effect as of the time of marking, but with any changes effective at a later time as provided by subsection (d) of this section or by G.S. 163-132.5A; and
- (3) File, within 60 45 days of the date the maps are sent by the Legislative Services Office or at an earlier time deemed necessary by the State Board of Elections with the State Board and the Legislative Services Office the maps identifying the precinct boundaries and a written description of those boundaries deemed sufficient by the State Board to identify the precincts.

(b) The State Board of Elections and the Legislative Services Office shall examine the returned maps and their written descriptions. After its examination of the maps and their written descriptions, the Legislative Services Office shall submit to the State Board of Elections its opinion as to whether all precinct boundaries are coterminous with current township boundaries, current municipal boundaries, census block boundaries, or a combination of those boundaries, with notations as to where those boundaries do not comply with these standards. If the State Board determines that all precinct boundaries are coterminous with current township boundaries, current municipal

boundaries, census block boundaries, or a combination of those boundaries, the State Board shall approve the maps and written descriptions as filed and these precincts shall be the official precincts. Additionally, the Legislative Services Office shall submit to the State Board of Elections its opinion as to whether each precinct is composed solely of contiguous territory.

(c) If the State Board does not find that the filed precinct boundaries are coterminous with the current township boundaries, current municipal boundaries, census block boundaries, or a combination of those boundaries, the State Board shall not approve those precinct boundaries but shall alter the precinct boundaries to be coterminous with the census block boundaries, municipal boundaries or township boundaries nearest to those existing precinct boundaries and these altered precincts with their written descriptions prepared by the State Board shall then be the official precincts. If the State Board finds that a precinct does not consist solely of contiguous territory, it shall alter the precinct boundary so that it consists solely of contiguous territory, except where the non-contiguity is caused by the operation of G.S. 160A-132.5A.

(d) The changes in precinct boundaries under subsections (b) and (c) of this section shall be made effective not later than January 1, 1992.

(e) After the State Board approves or alters the precincts filed by the county boards and before January 2, 1990, no county board of elections may establish, alter, discontinue, or create any precinct except for changes resulting from ~~amending township or municipal boundaries~~ G.S. 163-132.5A or by division of one precinct into two or more precincts. ~~These changes shall be reported by the county board of elections to the State Board by filing the relevant amended Census maps and written descriptions of the precincts with the State Board and shall not be effective until approved by the State Board. The State Board shall certify these precinct changes to the U.S. Census Bureau.~~

(f) ~~The State Board of Elections~~ shall request that the U.S. Census Bureau provide summaries of census data by precinct, and shall participate in the 1990 Census Redistricting Data Program. When the State files with the Census Bureau precinct maps, those boundaries shall be those effective at the date of submission, but with any change with a postponed effective date made under subsection (d) of this section or made under G.S. 163-132.5A. In any case where the precinct includes non-contiguous portions because of the operation of G.S. 163-132.5A, the State Board of Elections shall designate those

areas for census data purposes as separate precincts.

Sec. 6. G.S. 160A-29 reads as rewritten:

"§ 160A-29. Map of annexed area, copy of ordinance and election results recorded in the office of register of deeds.--Whenever the limits of any municipal corporation are enlarged, in accordance with the provisions of this Article, it shall be the duty of the mayor of the city or town to cause an accurate map of such annexed territory, together with a copy of the ordinance duly certified, and the official results of the election, if conducted, to be recorded in the office of the register of deeds of the county or counties in which such territory is situated and in the office of the Secretary of State, and in the case of annexed territory located in a county with a population of 55,000 or over according to the 1980 decennial federal census, where the annexation ordinance becomes effective during the period beginning January 1, 1988, and ending January 2, 1990, to cause a copy of such map and ordinance to be filed with the county board of elections of the county where the territory is located."

Sec. 7. G.S. 160A-39 reads as rewritten:

"§ 160A-39. Annexation recorded.--Whenever the limits of a municipality are enlarged in accordance with the provisions of this Part, it shall be the duty of the mayor of the municipality to cause an accurate map of such annexed territory, together with a copy of the ordinance duly certified, to be recorded in the office of the register of deeds of the county or counties in which such territory is situated and in the office of the Secretary of State, and in the case of annexed territory located in a county with a population of 55,000 or over according to the 1980 decennial federal census, where the annexation ordinance becomes effective during the period beginning January 1, 1988, and ending January 2, 1990, to cause a copy of such map and ordinance to be filed with the county board of elections of the county where the territory is located."

Sec. 8. G.S. 160A-51 reads as rewritten:

"§ 160A-51. Annexation recorded.--Whenever the limits of a municipality are enlarged in accordance with the provisions of this Part, it shall be the duty of the mayor of the municipality to cause an accurate map of such annexed territory, together with a copy of the ordinance duly certified, to be recorded in the office of the register of deeds of the county or counties in which such territory is situated and in the office of the Secretary of State, and in the case of annexed territory located in a county with a population of 55,000 or over

according to the 1980 decennial federal census, where the annexation ordinance becomes effective during the period beginning January 1, 1988, and ending January 2, 1990, to cause a copy of such map and ordinance to be filed with the county board of elections of the county where the territory is located."

Sec. 9. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 3rd day of August, 1987.

S.B. 602

CHAPTER 716

AN ACT TO PROTECT CHILDREN PLACED FOR ADOPTION BY REQUIRING NOTICE AND INVESTIGATION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 48-3 is amended as follows:

(1) by changing the period at the end of the catch line to a semicolon and adding a new phrase to read:

"notice required before a child's placement; violation a misdemeanor; investigation.";

(2) by designating the present text of that section as subsection (a); and

(3) by adding two new subsections to read:

"(b) No less than 72 hours before any child less than 12 years old may be placed with any person in anticipation of an adoption, the director of social services of the county in which the parent or guardian resides or the county in which the child was born or will be born shall be notified in writing of the proposed placement. The written notification shall be sent by the prospective adoptive parents and shall contain:

- (1) the names and addresses of each parent or guardian of the child and of each person with whom the child is to be placed for adoption,
- (2) the signatures of a parent or guardian of the child and of each person with whom the child is to be placed for adoption,
- (3) the birth date or expected birth date and county of birth or expected county of birth of the child, and
- (4) the intention of the parties as to adoption of the child.

The notification may also contain any request for counseling that any of the parties to the placement wish to make.

The requirement of notification does not apply to placements with a child's relative listed in G.S. 48-21.

Any person who wilfully and knowingly violates this subsection shall be guilty of a misdemeanor.

(c) Promptly upon receipt of notification under subsection (b), the director shall investigate the proposed adoptive placement. The director may waive an investigation if circumstances warrant, or, in making an investigation, may rely on information already known to the department. If the director determines that the proposed placement appears to be contrary to the child's welfare, the director shall promptly notify all the parties to the proposed placement."

Sec. 2. G.S. 14-320 is repealed.

Sec. 3. This act shall become effective October 1, 1987, and shall apply only to placements made on and after that date.

In the General Assembly read three times and ratified this the 3rd day of August, 1987.

S.B. 711

CHAPTER 717

AN ACT TO PERMIT MEMBERS OF THE TEACHERS' AND STATE EMPLOYEES' RETIREMENT SYSTEM AND THE LOCAL GOVERNMENTAL EMPLOYEES' RETIREMENT SYSTEM TO PURCHASE CREDITABLE SERVICE FOR FEDERAL EMPLOYMENT AND PUBLIC SERVICE EMPLOYMENT FUNDED BY THE FEDERAL GOVERNMENT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 128-26 is amended by adding a new subsection to the end designated as (n) to read:

"(n) Credit at Full Cost for Federal Employment. Notwithstanding any other provisions of this Chapter, a member, upon the completion of 10 years of membership service, may purchase creditable service for periods of federal employment, provided that the member is not receiving any retirement benefits resulting for this federal employment, and provided that the member is not vested in the particular federal retirement system to which the member may have belonged while a federal employee. The member shall purchase this service by making a lump sum amount payable to the Annuity Savings Fund equal to the full liability of the service credits calculated on the basis of the assumptions used for purposes of the actuarial valuation of the liabilities of the Retirement System; and the calculation of the amount payable shall take into account the retirement allowance arising on account of the additional service credit commencing at the earliest age at which the member could retire on an unreduced retirement allowance, as determined by the Board of Trustees upon the advice of the consulting actuary, plus an administrative fee to be

set by the Board of Trustees. Members may also purchase creditable service for periods of employment with public community service entities within the State funded entirely with federal funds, other than the federal government, that are not covered by the provisions of G.S. 128-21(11) or G.S. 135-1(11), under the same terms and conditions that are applicable to the purchase of creditable service for periods of federal employment in accordance with this subsection. 'Public community service entities' as used in this subdivision shall mean community action, human relations, manpower development, and community development programs as defined in Articles 19 and 21 of Chapter 160A and Article 18 of Chapter 153A of the General Statutes and any other similar programs that the Board of Trustees may adopt."

Sec. 2. G.S. 135-4(w) is amended by adding a sentence to read:

"Members may also purchase creditable service for periods of employment with public community service entities within the State funded entirely with federal funds, other than the federal government, that are not covered by the provisions of G.S. 128-21(11) or G.S. 135-1(11), under the same terms and conditions that are applicable to the purchase of creditable service for periods of federal employment in accordance with this subsection. 'Public community service entities' as used in this subdivision shall mean community action, human relations, manpower development, and community development programs as defined in Articles 19 and 21 of Chapter 160A and Article 18 of Chapter 153A of the General Statutes and any other similar programs that the Board of Trustees may adopt."

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 3rd day of August, 1987.

H.B. 226

CHAPTER 718

AN ACT TO PROHIBIT INTERFERENCE WITH CIVIL RIGHTS.

The General Assembly of North Carolina enacts:

Section 1. The General Statutes are amended by adding a new Chapter to read:

"Chapter 99D.

"Civil Rights.

"Section 99D-1. *Interference with Civil Rights.*--(a) It is a violation of this Chapter if:

- (1) Two or more persons, motivated by race, religion, ethnicity, or gender, but whether or not acting under color of law, conspire to interfere with the exercise or enjoyment by any other person or persons of a right secured by the Constitutions of the United States or North Carolina, or of a right secured by a law of the United States or North Carolina that enforces, interprets, or impacts on a constitutional right; and
- (2) One or more persons engaged in such a conspiracy use force, repeated harassment, violence, physical harm to persons or property, or direct or indirect threats of physical harm to persons or property to commit an act in furtherance of the object of the conspiracy; and
- (3) The commission of an act described in subdivision (2) interferes, or is an attempt to interfere, with the exercise or enjoyment of a right, described in subdivision (1), of another person.

(b) Any person whose exercise or enjoyment of a right described in subdivision (a)(1) has been interfered with, or against whom an attempt has been made to interfere with the exercise or enjoyment of such a right, by a violation of this Chapter may bring a civil action. The court may award to a prevailing party compensatory damages, punitive damages, court costs, and reasonable attorneys' fees. The court may also restrain and enjoin such future acts by any party.

(c) No civil action may be brought or maintained, and no liability may be imposed, under this Chapter against a governmental unit, a government official with respect to actions taken within the scope of his official governmental duties, or an employer or his agent with respect to actions taken concerning his employees within the scope of the employment relationship."

Sec. 2. This act shall become effective October 1, 1987.

In the General Assembly read three times and ratified this the 3rd day of August, 1987.

H.B. 285

CHAPTER 719

AN ACT TO REQUIRE HOSPITALS TO ESTABLISH PROTOCOLS FOR ORGAN PROCUREMENT.

The General Assembly of North Carolina enacts:

Section 1. Article 16 of Chapter 130A of the General Statutes is amended by adding a new Section 130A-412.1 to read:

"§ 130A-412.1. *Duty of hospitals to establish organ procurement protocols.*—(a) In order to facilitate the goals of this Part, each hospital shall be required to establish written protocols for the identification of potential organ and tissue donors that:

- (1) Assure that the families of potential organ and tissue donors are made aware of the option of organ or tissue donation and their option to decline;
- (2) Encourage discretion and sensitivity with respect to the circumstances, views and beliefs of such families;
- (3) Require that an organ procurement agency be notified of potential organ and tissue donors; and
- (4) Assure that procedures are established for identifying and consulting with holders of properly executed donor cards.

(b) The family of any person whose organ or tissue is donated for transplantation shall not be financially liable for any costs related to the evaluation of the suitability of the donor's organ or tissue for transplantation or any costs of retrieval of the organ or tissue.

(c) The requirements of this section, or of any hospital organ procurement protocols established pursuant to this section shall not exceed those provided for by the hospital organ protocol provisions of Title XI of the Social Security Act, except for the purposes of this section the term 'organ and tissue donors' shall include cornea and tissue donors for transplantation."

Sec. 2. G.S. 130A-414 is repealed.

Sec. 3. This act shall become effective October 1, 1987.

H.B. 752

CHAPTER 720

AN ACT TO MAKE TECHNICAL AMENDMENTS TO THE MENTAL HEALTH, MENTAL RETARDATION, AND SUBSTANCE ABUSE ACT OF 1985, CONFORMING CHANGES TO THE GENERAL STATUTES AND AUTHORIZE THE SECRETARY OF HUMAN RESOURCES TO ACCEPT CERTAIN FEDERAL FUNDS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-17.1(e) is amended by deleting "122-8.1 and 122-8.2", and substituting "and Article 3 of Chapter 122C of the General Statutes".

Sec. 2. G.S. 122C-112(b) is amended by adding a new subsection to read:

"(8) Accept, allocate, and spend funds from the United States Department of Defense to operate mental health demonstration projects for families of the uniformed services. Demonstration projects shall be operated through an area authority. The operation of these demonstration projects may be accomplished through subcontracts with one or more private sector providers."

Sec. 3. G.S. 122C-145(c), G.S. 122C-147(g), and G.S. 122C-405 are each amended by deleting "Chapter 150A", and substituting "Chapter 150B".

Sec. 4. This act shall become effective August 1, 1987.

In the General Assembly read three times and ratified this the 3rd day of August, 1987.

H.B. 820

CHAPTER 721

AN ACT TO PROVIDE THAT LEGAL TITLE TO AN ARTIFACT HELD BY THE DEPARTMENT OF CULTURAL RESOURCES DIVISION OF ARCHIVES AND HISTORY PASSES TO THE DIVISION OF ARCHIVES AND HISTORY IF THE OWNER OF THE ARTIFACT CANNOT BE LOCATED OR IF OWNERSHIP OF THE ARTIFACT IS UNKNOWN, AND TO CLARIFY THE DUTIES OF THE STATE BUILDING COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 121-7 is amended as follows:

- (1) by designating the text of the first paragraph as subsection (a);
- (2) by designating the text of the second paragraph as subsection (b); and
- (3) by adding to the end two new subsections to read:

"(c) Title to an artifact whose ownership is unknown or whose owner cannot be located passes to the Division of Archives and History if:

- (1) The artifact was placed on loan with the Division of Archives and History for a period of time exceeding five years or for an indefinite period of time or the artifact's status with the Division of Archives and History as a loan, gift, purchase, or other arrangement is unknown; and
- (2) The artifact has been a part of the inventory of the Division of Archives and History for more than five years; and
- (3) The Department of Cultural Resources makes a reasonable effort, including a diligent search of its own records to locate and inform the owner, his heirs or successors, that

the Division of Archives and History is holding the artifact and clarify the artifact's status with the Division of Archives and History.

To initiate the procedure to clarify title to an artifact, the Department of Cultural Resources shall mail, first class postage prepaid, a notice to the last known address of the owner of the artifact or the last known address of the owner's heirs or successors. The Department need not mail a notice, if after exercising due diligence to find a record within the Department of Cultural Resources indicating the owner of the artifact and his latest address, that information is not available. If no claim is made within 90 days from the date that notice is mailed, the Department of Cultural Resources shall publish a notice in three papers of general circulation once a week for four consecutive weeks. If, at the end of 30 days, no claim of ownership is submitted to the Department of Cultural Resources, the Department may determine that legal title to the artifact is vested in the Division of Archives and History.

(d) Any person claiming legal title to an artifact to which the North Carolina Division of Archives and History also claims title as provided by subsection (c) may file a claim with the Department of Cultural Resources on a form prescribed by the Department. If the claimant is not the owner from whom the museum originally obtained the artifact, the claimant shall state in addition to any other information required by the Department, the facts surrounding the unavailability of the person who originally loaned or bestowed the property to the Division of Archives and History and the basis for the claim to title of the artifact. If the Department of Cultural Resources is satisfied that the claim is valid and that the claimant is the legal owner of the artifact, the Department shall return the artifact to the owner. If the Department determines that the claim is not valid and rejects the claim to the artifact, the claimant may appeal the determination as provided by Chapter 150B."

Sec. 2. G.S. 143-135.26(1) as is contained in Section 1 of Chapter 71 of the 1987 Session Laws, is amended by rewriting the second and third sentences to read:

"The rules shall provide that the State Building Commission, after consulting with the funded agency, is responsible and accountable for the final selection of the designer except when the General Assembly or The University of North Carolina is the funded agency. When the University or the General Assembly is the funded agency, the University or the Legislative Services Commission, respectively, is responsible and accountable for the final selection of the designer."

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 3rd day of August, 1987.

H.B. 1012

CHAPTER 722**AN ACT TO DELAY THE REVERSION OF CERTAIN FUNDS
APPROPRIATED TO A SPECIFIC NONSTATE AGENCY.**

The General Assembly of North Carolina enacts:

Section 1. The first sentence of G.S. 143-31.5(a) is amended by deleting the date "June 30, 1987" and substituting "June 30, 1988" and by deleting the date "July 31, 1987" and substituting "July 31, 1988".

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 3rd day of August, 1987.

S.B. 449

CHAPTER 723**AN ACT TO AUTHORIZE AND TO REGULATE THE
WITHDRAWAL OR TRANSFER OF AN ASSUMED NAME AS
RECOMMENDED BY THE GENERAL STATUTES
COMMISSION.**

The General Assembly of North Carolina enacts:

Section 1. G.S. 66-68 is amended in the catch line by inserting after the word "services" and before the period the following language:

"; withdrawal or transfer of assumed name".

Sec. 2. G.S. 66-68 is further amended by adding a new subsection (f) to read as follows:

"(f) Any person, partnership, or corporation executing and filing a certificate of assumed name as required by this section may, upon ceasing to engage in business in this State under the assumed name, withdraw the assumed name or transfer the assumed name to any other person, partnership, or corporation by filing in the office of the register of deeds of the county in which the certificate of assumed name is filed a certificate of withdrawal or a certificate of transfer executed as provided in subsection (b) of this section and setting forth:

- (1) The assumed name being withdrawn or transferred;
- (2) The date of filing of the certificate of assumed name;
- (3) The name and address of the owner or owners of the business;
- (4) A statement that such owner or owners have ceased engaging in business under the assumed name;
- (5) If the assumed name is to be withdrawn, the effective date (which shall be a date certain but not more than 20 days from the date of filing) of the withdrawal if it is not to be effective upon the filing of the certificate of withdrawal; and
- (6) If the assumed name is to be transferred, the name and address of the transferee or transferees, and the effective date (which shall be a date certain but not more than 20 days from the date of filing) of the transfer if it is not to be effective upon the filing of the certificate of transfer. This subsection does not relieve a transferee of the obligation to file a certificate of assumed name as required by this Article."

Sec. 3. G.S. 66-69 is amended by adding a new sentence at the end thereof to read as follows: "The index shall also contain notations of any certificates of withdrawal or certificates of transfer filed in the county".

Sec. 4. G.S. 66-71(a) is amended by deleting from line 2 the words "this Article" and inserting in lieu thereof the language "G.S. 66-68(a) or G.S. 66-68(c)".

Sec. 5. This act shall become effective October 1, 1987 and shall not apply to pending litigation.

In the General Assembly read three times and ratified this the 4th day of August, 1987.

H.B. 144

CHAPTER 724

AN ACT TO DESIGNATE TAXABLE REAL PROPERTY, SET APART FOR HUMAN BURIAL PURPOSES, AS A SPECIAL CLASS OF PROPERTY FOR TAXATION PURPOSES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-278.2 is amended by designating the existing section as subsection (a), and by deleting the last sentence of the existing section.

Sec. 2. G.S. 105-278.2 is amended by adding two new subsections to read:

"(b) Taxable real property set apart for human burial purposes is hereby designated a special class of property under authority of Article V, Section 2(2) of the North Carolina Constitution, and it shall be assessed for taxation taking into consideration the following:

- (1) The effect on its value by division and development into burial plots;
- (2) Whether it is irrevocably dedicated for human burial purposes by plat recorded with the Register of Deeds in the county in which the land is located; and
- (3) Whether the owner is prohibited or restricted by law or otherwise from selling, mortgaging, leasing or encumbering the same.

(c) For purposes of this section, the term 'real property' includes land, tombs, vaults, monuments, and mausoleums, and the term 'burial' includes entombment."

Sec. 3. This act shall become effective January 1, 1988.

In the General Assembly read three times and ratified this the 4th day of August, 1987.

H.B. 899

CHAPTER 725

AN ACT TO ALLOW CITIES, TOWNS, AND OTHER GOVERNMENT UNITS ADDITIONAL TIME TO COMMIT WATER AND SEWER GRANT FUNDS AND TO REVERT FUNDS NOT COMMITTED.

The General Assembly of North Carolina enacts:

Section 1. Section 5.12(i) of Chapter 480 of the 1985 Session Laws reads as rewritten:

"(i) If any city, county, or government unit that has a suballocation has not by ~~December 31, 1986~~, June 30, 1988, committed some or all of its suballocation to a project by submitting it to an appropriate State agency for approval as provided by law for water or sewer projects, the amounts not committed ~~may no longer be available to the city, county, or government unit.~~ shall revert to the General Fund. Notwithstanding the provisions of subsection (a) of this section, no local match is required for amounts committed after December 31, 1986."

Sec. 2. Section 5.12(m) of Chapter 480 of the 1985 Session Laws reads as rewritten:

"(m) The State Budget Office, and the Departments of Human Resources and Natural Resources and Community Development shall jointly submit a report that specifies projects funded under this section, the amount and sources of funding where non-State funds are

used, the population served by the project, and the purpose and need addressed by the project. The report shall be submitted to the Joint Legislative Commission on Governmental Operations by January 15, 1986, and to the Fiscal Research Division, with supplemental reports on May 15, 1986, ~~and February 15, 1987,~~ 1987, October 15, 1987, and May 15, 1988."

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 4th day of August, 1987.

H.B. 933

CHAPTER 726

AN ACT TO AUTHORIZE CONTINUANCE OF THE OPEN SEASONS FOR FOXES ESTABLISHED IN ACCORDANCE WITH CHAPTER 1203, SESSION LAWS 1981 (REGULAR SESSION 1982).

The General Assembly of North Carolina enacts:

Section 1. G.S. 113-291.4 is amended by adding a new subsection to read:

"(f1) In those counties in which open seasons for taking foxes with weapons and by trapping were established between June 18, 1982, and July 1, 1987, in accordance with the procedure then set forth in subsection (f) of this section, the Wildlife Resources Commission is authorized to continue such seasons from year to year so long as the fox populations of such counties remain adequate to support the resulting harvest. The counties referred to in this subsection are as follows: Alexander, Anson, Avery, Brunswick, Camden, Caswell, Clay, Currituck, Edgecombe, Graham, Granville, Henderson, Hyde, Johnston, Macon, Moore, Northampton, Perquimans, Sampson, Stanly, Stokes and Tyrrell."

Sec. 2. This act shall not be construed to repeal or modify any local or special act of legislation providing a fox season in a county named in Section 1.

Sec. 3. This act shall become effective upon ratification and shall expire on July 1, 1989.

In the General Assembly read three times and ratified this the 4th day of August, 1987.



























